



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278

DEC 9 1992

Mr. Lance Miller
Assistant Commissioner for Site Remediation
State of New Jersey
Department of Environmental Protection
and Energy
401 East State Street
Trenton, New Jersey 08625

Dear Lance,

I have signed the EPA/State Pilot Agreements for the L.E. Carpenter Site and the Hercules Incorporated-Higgins plant Site. One signed copy of each site agreement is enclosed; I have retained the other for our records.

Consistent with Section D. 9 of the agreements and our discussions of last month, we will communicate progress and decision points at these sites at briefing sessions rather than through detailed review of routine deliverables, as we would in the normal process. We also committed to raising any significant concerns to each other as early in the process as possible. Ray Basso will be my designated point of contact. He will work closely with Bruce Venner as your lead for this effort. I suggest that Ray and Bruce coordinate on an efficient method to track progress at the sites and to track the success of the pilot program. This should include the interim evaluation envisioned in the agreement to occur after one year and the measures by which we will define the overall success of the pilot. You and I can review this at an appropriate point. If you agree, I would propose that we meet during the month of January; tracking and evaluating the pilot can be one of our agenda items.

We will forward to you for comment a similar draft agreement for the NL site by December 31, 1992. I look forward to our cooperative effort on these sites.

Sincerely yours,

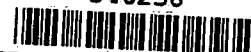
Kathleen C. Callahan

Kathleen C. Callahan, Director
Emergency and Remedial Response Division

Enclosure

J. Timco
Nickie
Sharon Jaffes

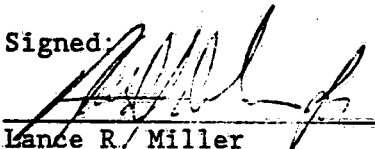
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AGREEMENT

We the undersigned do hereby agree to initiate the EPA/State Pilot Agreements for the L.E. Carpenter site located in the Borough of Wharton, Morris County, New Jersey and the Hercules Incorporated - Higgins Plant site, located in Gibbsboro, Gloucester County, New Jersey. All stipulations of the attached agreements will be adhered to for the duration of the project.

Signed:


 7/10/92
Lance R. Miller
Assistant Commissioner
Site Remediation Program
N.J. Department of Environmental
Protection and Energy

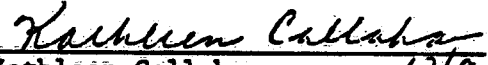
 12/9/92
Kathleen Callahan
Director, Emergency and Remedial
Response Division
U.S. Environmental Protection Agency
Region II

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Signed:


Lance R. Miller
Assistant Commissioner
Site Remediation Program
N.J. Department of Environmental
Protection and Energy


Kathleen Callahan
Director, Emergency and Remedial
Response Division
U.S. Environmental Protection Agency
Region II

EPA/STATE PILOT AGREEMENT

The New Jersey Department of Environmental Protection and Energy (NJDEPE) and the Environmental Protection Agency, Region II, hereby enter into the following Agreement for the EPA/State Pilot Project. This agreement concerns the L.E. Carpenter site located in the Borough of Wharton, Morris County, N.J.

I. INTRODUCTION - PURPOSE

A. INTRODUCTION

This agreement is entered into by the United States Environmental Protection Agency, Region II (EPA), and the State of New Jersey pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), the Spill Compensation and Control Act, the Water Pollution Control Act, and the Solid Waste Management Act. EPA and the State of New Jersey agree to comply with all the provisions specified in this Agreement.

B. PURPOSE

This Agreement delineates the respective roles and responsibilities of each Party as they relate to the conduct of the EPA/State Pilot Project at L.E. Carpenter. A description of the Pilot Project is attached (see Appendix A.) To the extent a Superfund Memorandum of Agreement (SMOA) between NJDEPE and EPA is in affect, this Agreement supersedes the SMOA for the designated site.

II. AGREEMENT

NOW, THEREFORE, IT IS AGREED THAT:

A. Lead Agency Designation

1. When the State is the lead agency:

The Department of Environmental Protection and Energy is the lead State agency for response activities at L.E. Carpenter pursuant to section 300.515(e)(2) of the NCP. The State of New Jersey cleanup program is implemented under the Spill Compensation and Control Act, N.J.S.A. 58:10, the Water Pollution Control Act, N.J.S.A. 58:10A, and the Solid Waste Management Act, N.J.S.A. 13:1E.

B. Lead Agency Responsibilities

1. When either the EPA or the State is the lead agency:

- a. For sites in the pre-remedy selection stage, the lead agency has the option of selecting and implementing the remedy without support agency concurrence. Alternatively, the lead agency has the option of seeking support agency concurrence on the remedy, but the support agency may decline to concur. Unless the Assistant Administrator of the Office of Solid Waste and Emergency Response (AA/OSWER) or Regional Administrator (RA) concurs in writing, EPA shall not be deemed to have approved the State remedy. Section 300.515(e)(2) of the NCP allows States to select the remedy without EPA concurrence where the site has been designated as a non-Fund-financed State-lead enforcement site (i.e., the State is proceeding under State authority and without Superfund monies at that site).
- b. The NJ DEPE is not a PRP at L.E. Carpenter, Borough of Wharton.
- c. An enforceable order (Attachment #1) between the lead Agency and the PRP is in place at the site. The agreement contains the PRP's agreement to:
 - i. complete the current stage of the project (RI/FS, RD/RA);
 - ii. complete its activities in accordance with an enforceable schedule (see Section G);
 - iii. be subject to lead agency approval of major deliverables, such as the work plans, the RI, and the FS. The agreement provides some mechanism for the lead's ability to revise, or require PRPs to modify, deliverables in accordance with the lead's comments; and
 - iv. demonstrate resource availability (e.g., financial viability) to complete the requirements of the agreement.
- d. The order provides for the lead's recourse for PRP non-compliance (e.g., statutory or stipulated penalties, some form of financial assurances).
- e. Lead and support agencies reserve all rights provided them by relevant State law, the NCP and CERCLA,

including the right of the State of New Jersey to seek the enhancement of remedies selected by EPA at EPA-lead sites. However, certain authorities, protection, exemptions and waivers afforded by CERCLA (e.g., waiver of permits or federal ARARs) are not available for cleanups conducted under State law (i.e., State-lead Pilot sites).

- f. Enforcement actions taken in response to noncompliance with executed enforceable agreements/orders between the lead agency and PRPs will be timely and pursued to resolution in accordance with applicable State and Federal laws, applicable policies and guidelines.
- g. The lead agency has primary responsibility for communications with PRPs regarding the site. To the extent practicable, support agency communication with PRPs, regarding responsibilities at the site, will not take place without prior notice to the lead agency.
- h. The lead agency agrees to conduct 5-year review(s) as appropriate to determine whether:
 - i. the remedy will function.
 - ii. standards and information have changed.
 - iii. the remedy is still protective.

2. When the State is the lead agency:

a. The State of New Jersey commits to:

- i. achieve a remedy that would result in a CERCLA-quality cleanup (as discussed in Subpart H of the NCP and 55 FR 8793).

New Jersey may choose to select remedies that comply with stricter cleanup standards (i.e. "substantial compliance with" or "not inconsistent with the NCP") instead of a remedy that would result in a CERCLA-quality cleanup. If a "CERCLA-quality cleanup" is achieved, it is generally expected that no further response action will be necessary, and that the site will be considered for deletion from the NPL.

- ii. provide for meaningful public participation (as defined in Subpart H).
- iii. compile an administrative record for the selection of the remedy (as defined in Subpart I). The

administrative record will be reviewed by a New Jersey Deputy Attorney General to ensure compliance with the NCP and CERCLA prior to release of the administrative record.

In Appendix B, the State presents its demonstration that the State has the technical and administrative ability to perform a CERCLA-quality cleanup, as specified in Section B.2.a. above.

- b. The Attorney General of the State of New Jersey has certified in a letter that the agreement is enforceable under State law and that State authority is sufficient to produce a CERCLA-quality cleanup. The certification letter includes citations to statutory and regulatory authority and any relevant case law upholding such authority. Attachment #2 of this Agreement is a copy of the letter from the State Attorney General certifying such authority.
- c. In the Record of Decision or equivalent document, the State as lead agency agrees to demonstrate, in writing, how the remedy it has chosen results in a CERCLA-quality cleanup where State actions were not expressly consistent with the NCP. The demonstration must address the need for a risk assessment or some alternative to a risk assessment as a means for demonstrating that the protectiveness component of a CERCLA-quality cleanup has been achieved.

In the case where a ROD or equivalent document has not been completed by the end of the Pilot period (two years from initiation of the Pilot), the State agrees to demonstrate, to the extent feasible, how the State process and requirements would result in a CERCLA-quality cleanup.

- d. EPA can take over as lead agency or increase its level of involvement if:
 - i. lead and support agencies mutually agree.
 - ii. the conditions for lead designation are not achieved or maintained during the pilot including meeting dates scheduled in the Pilot Site Agreement (also see Sections E. Selecting Pilot Sites and F. Lead and Support Roles for the Pilot).
 - iii. the remedy selected by the State is not protective of human health and the environment.

- vi. State actions pose or may pose an imminent and substantial endangerment to public health or the environment.
- e. If there is a cooperative agreement for the site, the State agrees not to expend money from the cooperative agreement, once this Pilot Agreement is signed or in the future, if the State is designated as lead for a Pilot site.
- C. **Support Agency Responsibilities.** When either EPA or the State is the support agency.
 - 1. The support agency will be kept informed of activities at the site (quarterly progress reports) and receive copies of (and have the opportunity to provide comments on) major deliverables and the proposed remedy, as specified in Section E.3. below.
 - 2. Support agency concurrence is not required for remedy selection or implementation and may not be implied.
- D. **Points of Contact** - The points of contact shall be the Chief, Bureau of Federal Case Management, for the State and the Branch Chief, New Jersey CERCLA Enforcement Branch, for EPA.
- E. **Planning/Coordination/Review Processes**
 - 1. **ARARs/TBCs Process** -

The lead agency will solicit ARARs from the support agency for each pilot site in accordance with the schedule in Section G. Generally, the support agency must identify and submit ARARs to the lead agency within 30 working days of a written request for these ARARs unless otherwise mutually agreed to by the lead and support agencies. If disagreements arise over ARARs, the procedures in Section E.6., below, are to be followed.
 - 2. **Administrative Record** -

The lead agency is responsible for compiling and maintaining the Administrative Record file pursuant to Subpart I of the NCP. It is the responsibility of the lead agency to see that a copy of each relevant document is sent to the appropriate location for maintenance of the Administrative Record file. The Administrative Record file should contain all materials necessary to support lead agency decisions.

3. Deliverables and Record of Decision -

The lead agency shall submit draft reports to the support agency. If the support agency chooses to comment, comments shall be submitted to the lead agency within 30 working days of receipt of the deliverable (unless another period is agreed to by the lead and support agencies).

The lead agency must provide the support agency the following documents (or State equivalent)

- a. Final RI Report (including identification of ARARs)
- b. Final FS Report
- c. Draft Proposed Plan
- d. Final Pre-signature ROD, ROD amendments and Responsiveness Summary
- e. Final RD and RA documents

The lead agency shall respond to the support agency's written comments in writing only in the Draft Proposed Plan and Final Pre-signature ROD phases. When EPA is the support agency, EPA review comments submitted to the State shall include disclaimer language as specified in Appendix C. The disclaimer language specifies that EPA review and comment on NJ DEPE documents do not constitute EPA concurrence on any or all points contained in the document.

The State may choose to include similar disclaimer language in its review comments to EPA when the State is the support agency.

4. Concurrence on Lead Agency RODs -

Support agency concurrence on lead agency RODs is not required. However, the lead agency may request support agency concurrence. ROD signature or other written approval by the designated support agency official (AA/OSWER or RA where EPA is the support agency) is required to confer ROD concurrence.

5. Deletion from the NPL -

At all State-lead non-Fund-financed Pilot sites, after completion of appropriate remedial action, the State will prepare and submit to EPA a close-out report and deletion package for EPA review and approval. The lead agrees to comply with relevant portions of the completion/deletion guidance (Directive #s 9320.2-3A and 9320.2-3B). EPA nonconcurrence on a State lead ROD will not preclude EPA review and approval of a site close-out report.

6. Management Review Process -

In the event of disagreements between EPA and the State concerning the Pilot Project, the State Case manager and EPA Regional Project Manager will attempt to resolve such disagreements promptly. If disagreements can not be resolved at this level, the problem will be referred to the supervisors of these individuals for further consultation. This supervisory referral and resolution process will continue, if necessary, to the level of Regional Administrator for the EPA and the Commissioner of DEPE for the State. If agreement still can not be reached, the lead agency makes the final decision on deliverables and the remedy.

F. Pilot Evaluation

1. The period of the Pilot will be two years, ending July 31, 1994. There will be an interim evaluation after one year, an interim report after 18 months and a final evaluation at the end of two years. The evaluations will be conducted by EPA Headquarters. The lead and support agencies will cooperate in providing information for the evaluation.
2. Progress updates. For purposes of tracking the progress of the Pilot, the State will provide EPA Headquarters and Region II with quarterly updates on progress at the sites (status, schedules and

deliverables) and summaries of events expected to occur in the next quarter.

G. Schedule

1. EPA Region II and the State of New Jersey agree to the following schedule:

<u>MILESTONES</u>	<u>ACTION</u>	<u>DATE</u>
ARAR/TBC Determinations	Received	June 1990
Draft RI/FS Workplan	Approved	December 1986
Final RI/FS Workplan	Approved	Nov 88/June90
Draft RI Report	Completed	November 1989
Draft FS Report	Completed	April 1991
Final RI Report	Receive	June 1992
Final FS Report	Receive	September 1992
Draft Endangerment Assessment	Completed	November 1990
Final Endangerment Assessment	Approved	March 1992
Proposed Plan	Prepare	October 1992
Draft ROD	Prepare	January 1993
Final ROD	Prepare	February 1993
RD Workplan	Receive	August 1993
RD Completed	Receive	January 1995
RA Workplan	Receive	February 1995
RA Completed		July 1996
Extended RA (O&M) Plan	Receive	August 1996
Final RA Inspection Reports	Receive	September 1996
Final Construction	Approve	October 1996 Report
Close-out & Deletion Report	Complete	December 1996
Notice of Intent to Delete - Note: G.W. pump and treat to continue for 25 years		February 1997

**Planning & Management As submitted by USEPA headquarters
Reports**

2. Generally, EPA assumes that the lead will not change for the site after completion of the Pilot unless lead is redesignated for reasons specified in Section B.2.b. Therefore, Region II and State agree to develop another schedule for remedial activities remaining at the site not covered by the above agreement or order described in Section II.B.1.c.

- (b) EPA approval of deliverables would not be required; EPA may review deliverables in its role as a support agency.
 - (c) At EPA-lead pilot sites, the States would adopt a support role similar to the EPA support role at State-lead pilot sites.
 - (d) EPA's major role would be to review pilot sites for deletion from the NPL after cleanup is completed. EPA would also periodically review the continued appropriateness of the State-lead designation at the site.
3. Implementation of the Pilot
- (a) A workgroup of representatives from EPA Headquarters and certain EPA Regions and States was established to implement the Pilot recommendation. (Appendix D)
 - (b) This outline was developed based on the December 17, 1990, and February 20, 1991, Pilot Workgroup meetings and other additional input from the workgroup and other Regional and State representatives.

C. PURPOSE OF PILOT

- 1. To systematically evaluate States' capability to select remedies under State law without EPA concurrence and to undertake cleanups with minimal EPA oversight.
- 2. To help determine whether hazardous waste cleanup at NPL sites can be conducted by capable States without EPA oversight and approval. Additionally, to provide information that could be used to enhance the State role.
- 3. To provide a vehicle for "trying out" (defining) reduced EPA oversight. Reducing oversight aids in economizing resources. Oversight may be reduced by EPA identifying specific activities for oversight.

To measure the effect of reduced EPA oversight (and reduced duplication of effort) on the quality of the remedy, the timeliness of the process and the resources available for other activities.

To utilize EPA and State resources to the fullest extent practical by identifying and minimizing oversight roles that may lead to duplication of effort.
- 4. To improve interaction between States and Regions.

D. SCOPE OF PILOT

- 1.. Remedy selection is the primary focus of the pilot because (a) remedy selection is a major area of potential dispute between EPA and the States and (b) EPA and State review efforts may be especially

duplicative throughout the process of developing a remedial plan. As a result, the preferred candidate sites will be those sites in the Feasibility Study/Remedy Selection stage at some point during the Pilot².

2. At State-lead pilot sites, the State selects the remedy using State authority and sources of funding other than the Superfund with limited oversight from EPA. At State-lead pilot sites, EPA may review the ROD and deliverables, however, EPA concurrence is not required for State remedy implementation. EPA's major involvement is the decision whether the State should continue as the lead agency throughout the process and whether to delete the site from the NPL after cleanup is completed.
3. For sites designated as non-Fund-financed State-lead enforcement, EPA will not provide site-specific cooperative agreement funding for response and enforcement actions while the site is designated as a non-Fund-financed State-lead enforcement site.
4. EPA, in the support agency role, will be kept informed of activities at the site (i.e., quarterly progress reports) and receive copies of (and have the opportunity to provide timely comments on) major deliverables and the proposed remedy.
5. The State support role at EPA-lead pilot sites will be comparable to the EPA role at State-lead pilot sites, namely that the support agency (State) would be kept informed of the progress at the site (i.e., quarterly progress reports) and would receive (and have an opportunity to provide timely comments on) major deliverables and the proposed remedy. States, as a support agency, will have the opportunity to receive site-specific cooperative agreements. Essentially, for both EPA and States, support agencies role would be the minimum described in 40 CFR 300.515. Lead and support agency roles are discussed in greater detail in Section F. Lead and Support Agency Roles.
6. In order to be designated lead for pilot sites, States will commit to (1) and demonstrate an ability to achieve a remedy that would result in a CERCLA-quality cleanup (as discussed in Subpart H of the NCP and 55 FR 8793); (2) provide for meaningful public participation (as defined in Subpart H); and (3) compile an administrative record for the selection of the remedy (as defined in Subpart I.)

States can decide to apply a stricter standard than a CERCLA-quality cleanup for following CERCLA or the NCP (such as "substantial compliance with" or "not inconsistent with the NCP") but this is not required for pilot participation. If a "CERCLA-quality cleanup" is achieved, it is generally expected that no further response action will be necessary.

^{2/} When, for State-lead sites, the terms Remedial investigation (RI), Feasibility Study (FS), Record of Decision (ROD), Remedial Design (RD) and Remedial Action (RA) are used, State equivalents are intended.

and that the site will be considered for deletion from the NPL. This standard would also provide the State cleanup process with flexibility.

7. States and EPA retain all rights provided by relevant State law, the NCP or CERCLA including States' right to seek enhanced remedies at EPA-lead sites. However, certain authorities, protections, exemptions and waivers afforded by CERCLA (e.g., waiver of permits or federal ARARs) are not available for cleanups conducted under State law (i.e., State-lead Pilot sites.)
8. EPA can take over as lead agency or increase its level of involvement if: (1) lead and support agencies mutually agree; (2) the conditions for lead designation are not achieved or maintained during the pilot, including meeting dates scheduled in the Pilot Site Agreement (also see Sections E. Selecting Pilot Sites and F. Lead and Support Roles for the Pilot); (3) the remedy selected by State is not protective of human health and the environment; or (4) State actions pose or may pose an imminent and substantial endangerment to public health or the environment.
9. Details about how the State and Region may implement the provisions of the Pilot as specified in the Agreement may be negotiated between the State and Region. For example, the Agreement specifies that the lead agency will submit deliverables to the support agency. Whether the support agency reviews and comments on the lead agency's deliverables may be negotiated between the lead and support agencies³. The support agency may agree to file the deliverables for informational purposes only, to submit comments or to concur with the ROD, if requested. However the details are negotiated, the lead agency role at the State Pilot site and the lead agency role at the EPA Pilot site must be the same. Similarly, the support agency role must be the same at both the EPA and State Pilot sites. Such details shall be specified in the Agreement.
10. Period of pilot will be two years. There will be an interim evaluation after one year. An interim report after 18 months and a final evaluation at end of the two years. See Section H. Evaluation Goals for Pilot Sites.

E. SELECTING PILOT SITES

1. EPA-lead and State-leads will be in the same States, to the extent practicable, in equal ratio to each other. To the extent practicable, the minimum number of pilot sites will be 20 (i.e., 10 State-lead and 10 EPA-lead.)

³/ As stated in II.B.2.c. of the Agreement and F.2.5 of this document, EPA may take back lead or increase its level of involvement at the State-lead Pilot site.

2. Individual States will propose to the Regions sites that the States believes meet the criteria for inclusion in the Pilot.
3. Criteria for State-lead sites in Pilot:
 - (a) The pilot site must be on or be proposed for inclusion on the NPL by the date of the initiation of the pilot.
 - (b) In the Record of Decision or equivalent document, the State as lead agency agrees to demonstrate, in writing, how the remedy it has chosen results in a CERCLA-quality cleanup where State actions were not expressly consistent with the NCP. - [Actions consistent with the NCP will result in a CERCLA-quality cleanup and as such this demonstration will not be necessary.] The demonstration must address the need for a risk assessment or some alternative to a risk assessment as a means for demonstrating that the protectiveness component of a CERCLA-quality cleanup has been achieved.
 - (c) An enforceable two-party agreement between the State and a PRP (or PRPs) or an order issued under State authority, must be in place at the site, or can be expected to be in place by the time the pilot project begins. Since the primary focus of the pilot is State remedy selection, sites at which remedy selection is likely to occur during the term of the pilot are the preferred candidates for the pilot. These sites would likely already be subject to an enforceable agreement or order prior to initiation of the pilot. The agreement or order must either contain [the PRP's agreement to:] or [require the PRPs to:]
 - i. complete the current stage of the project (RI/FS, RD or RA). The PRP's agreement to complete future phases (e.g., an agreement covering the entire remedial process) does not affect eligibility.
 - ii. complete its activities in accordance with an enforceable schedule (see Section G).
 - iii. be subject to State approval of major deliverables, such as the work plans, the RI, and the FS.

At pre-remedy selection sites, the enforceable agreement must make clear that the State selects the remedy and provide some mechanism for the State's ability to revise, or require PRPs to modify, deliverables in accord with State comments.
 - iv. demonstrate resource availability (e.g., financial viability) to complete the requirements of the agreement. (The agreement may be written to specify State funding of PRP oversight).

- (d) The agreement must provide for State recourse for PRP non-compliance (e.g., statutory or stipulated penalties, some form of financial assurances).
 - (e) The State Attorney General (or equivalent official) must certify in a letter that the agreement or order is enforceable under State law and that State authority is sufficient to produce a CERCLA-quality cleanup. The certification letter must include citations to statutory and regulatory authority and any relevant case law upholding such authority.
 - (f) The State must commit to:
 - i. maintaining an administrative record for the selection of the remedy (as defined in Subpart I of the NCP).
 - ii. be capable of implementing a CERCLA-quality cleanup (as defined in Subpart H of the NCP).
 - iii. comply with the provisions of Subpart H of the NCP to satisfy the public participation component of a CERCLA-quality cleanup.
 - iv. not request lead agency cooperative agreement funding for the site once the pilot agreement is in place or to use cooperative agreement money at the site once the site is designated as a non-Fund-financed State-lead enforcement site.
 - (g) There must not have been substantial past federal expenditures at the site that EPA may have difficulty recovering if the site is designated as a non-Fund-financed State-lead enforcement site.
 - (h) The State desires to be in the Pilot.
 - (i) The State must prepare and submit the close-out report and deletion package to EPA for consideration. The State agrees to comply with relevant portions of the completion/deletion guidance for deleting sites from the NPL (OSWER Directive #s 9320.2-3A and 9320.2-3B).
 - (j) States agree to conduct 5-year review(s), as appropriate, to determine if (1) the remedy will function; (2) standards and information has changed; (3) the remedy is still protective.
4. If a State's proposed sites meet the above criteria, specific selection of sites could be based on the following factors:
- (a) Distribution: Pilot sites, if possible, should not be concentrated in one State or in one Region.

- (b) Site complexity: large number of PRPs, operable units or political issues.
 - (c) National precedent: pilot sites should not include sites that will likely establish a significant national precedent requiring substantial federal involvement.
 - (d) Level of relevant State experience at NPL and non-NPL sites or, where specific experience is lacking, quality of plans for enforcing/overseeing agreements and selecting remedies.
 - (e) Lead changes: participation in pilot should not generally require lead change or envision future lead change after termination of the Pilot.
 - (f) The State is not a PRP at the site.
5. Criteria for EPA-lead pilot sites:
- (a) State agrees that the site should be an EPA-lead pilot site.
 - (b) EPA-lead pilot sites should be of comparable complexity as State-lead pilot sites, e.g., number of PRPs, site size/classification.
 - (c) The federal government is not a PRP at the site.
 - (d) Generally, EPA should retain lead at the site after the pilot has been completed.

F. LEAD/SUPPORT ROLES FOR PILOT SITES

1. The lead agency shall submit draft reports to the support agency for review. The support agency may, if it chooses, submit comments to the lead agency within 30 working days of receipt of reports, unless another time schedule is agreed to by the lead and support agencies. The lead agency must provide the support agency the following documents (or State equivalent) for review for RI/FS:
 - a. draft work plan
 - b. draft RI
 - c. draft alternatives array
 - d. draft FS report (including identification of ARARs) and remedial plan proposal
 - e. draft ROD and ROD amendments
 for RD/DA:

a. draft RD/RA documents

The lead agency shall also provide the final version of the above documents to the support agency upon completion.

2. The lead agency shall respond to support agency comments as follows:

- (a) written comments will be responded to in writing.
- (b) when EPA is the support agency, EPA comments submitted to the State shall include disclaimer language as specified in Appendix C. (Each submission of EPA comments to the lead agency for the site must include the disclaimer language.) The disclaimer language specifies that EPA review and comment on lead (State) agency documents does not constitute EPA concurrence on any or all points contained in document.

States may choose to include similar disclaimer language in their review comments to EPA when the State is the support agency.

(c) State and Region will develop a specific plan for dealing with disagreements.

1. The Plan will rapidly escalate issues to specified senior managers.

11. In general, the lead agency makes final decisions on deliverables and the remedy unless the criteria for EPA taking back the lead as specified in Section D.8. are met.

3. Support agency must identify and submit ARARs to the lead agency within 30 working days of a written request for these ARARs unless otherwise mutually agreed to by the lead and support agencies.

4. The lead agency is responsible for remedy selection pursuant to §§ 300.515(e)(2)(i) and (e)(2)(ii) of the NCP. The lead agency has the option of seeking support agency concurrence on the remedy, but support agency can decline to concur. Unless the ANSWER or RA concurs in writing, EPA shall not be deemed to have approved the State remedy.

5. Progress updates. For purposes of monitoring the progress of the Pilot, the lead and support agencies will provide EPA Headquarters with quarterly updates (status, schedules and deliverables) and a summary of events expected to occur in next quarter at each Pilot site. Each agency shall report on the activities assigned to its role as described in the Pilot Agreement.

G. SCHEDULE

1. Pilot Regions and States must agree on a schedule for activities to be conducted during the Pilot. The Pilot schedule could include the following applicable milestones, as appropriate:

<u>MILESTONE</u>	<u>ACTION</u>	<u>DATE</u>
FOR RI/FS:		
ARAR/TBC Determinations	(e.g., review/comment; review/approve; FYI/file)	
Draft RI/FS Workplan		
Final RI/FS Workplan		
Draft RI/FS Project Plans		
Final RI/FS Project Plans		
Draft Endangerment Assessment		
Final Endangerment Assessment		
Proposed Plan		
Draft ROD		
Final ROD		
FOR RD/RA:		
RD Workplan		
RA Workplan		
Extended RA (O&M) Plan		
Pre-Final and Final RA Inspection Reports		
Final Construction Package		
Close-out & Deletion Package		
Notice of Intent to		

Delete

Planning & Management
Reports

2. Generally, EPA assumes that the lead will not change for the site after completion of the Pilot unless lead is redesignated for reasons specified in Section D.8. Pilot Regions and States must agree to develop another schedule for remedial activities remaining at the site (if the Pilot activities cover only RI/FS/ROD.)

H. EVALUATION GOALS OF PILOT SITES

1. The evaluation of the Pilot sites will provide an overall analysis of lead and support agency performance, including:
 - (a) quality of oversight of RP activities pursuant to an enforcement agreement or order.
 - (b) quality of selected remedy and deliverables, using CERCLA-quality cleanup as the minimum evaluation standard.
 - (c) analysis of resources expended by State and EPA on pilot site.
 - (d) analysis of time required to complete each phase of the pilot.
 - (e) ability to meet project schedules.
 - (f) EPA/State interaction and the need to revise current practices/policies/regulations as appropriate.
 - (g) analysis of future resource implications of following the pilot model.
 - (h) State use of its own authority to require PRPs to carry out remedial actions at the site, as described in the Pilot Agreement, to negotiate enforceable agreements with PRPs and to enforce orders or agreements.
2. The lead and support agencies should agree to cooperate in providing information for the evaluation.
3. Headquarters will take the lead for evaluations, with the participation of selected Regions and States. Criteria for evaluation should be broad instead of detailed criteria. The process before the Pilot, at the beginning of the Pilot, and at the end of the Pilot, should be documented.

APPENDIX A

EPA/STATE PILOT SITE PROJECT¹

A. INTRODUCTION

The following outlines the State/EPA Remedy Selection Pilot Project recommended by the EPA/State Superfund Policy Forum. The Pilot Agreement, signed by the Pilot State and Region, must contain all the provisions contained within the model Pilot Agreement (attached). Details about how the State or Region may carry out Agreement provisions may be negotiated and specified in the Agreement. The model Agreement defines the baseline of the Pilot. The purpose of the model is to provide a common baseline among Pilot sites.

B. BACKGROUND

1. State/EPA Senior Policy Forum

- (a) In November 1989, the State/EPA Superfund Policy Forum was established. The objective of the Policy Forum was to develop and implement a strategy for maximizing the timely and effective cleanup of hazardous waste sites by enhancing and fully utilizing the capabilities of States and minimizing the duplication of effort between EPA and the States.
- (b) The Forum adopted a recommendation that a pilot project be conducted whereby States may select and implement remedies at specified sites without EPA approval.

2. The Forum recommended that:

- (a) EPA and a State designate a NPL site(s) in a State as a non-Fund-financed State-lead enforcement site pursuant to § 300.515(e)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The State would select the remedy under State law without EPA concurrence. EPA would not provide site-specific Fund money, such as cooperative agreement assistance, for State-lead Pilot sites.

^{1/} Lead agency and support agency roles are limited to those agreed upon by the participating State and EPA. It can be argued that all responsibilities associated with lead and support agency roles as specified in the NCP are not necessarily applicable to sites designated as Pilot non-Fund-financed State-lead enforcement sites. Cleanup at such sites is proceeding under State law, not CERCLA, thus specific provisions described in the NCP, specifically Subparts E and F, regarding the roles and responsibilities of lead and support agencies are not applicable. Subparts E and F of the NCP describes the roles and responsibilities of lead and support agencies at Fund-financed sites.

APPENDIX B

[To be completed by the State and attached to the Agreement signed by the State and Region.]

APPENDIX C

Model Language for Documents Transmitting EPA Comments to States at Non-Fund-Financed State-Lead Enforcement Sites.

The following language will be added to any comments EPA gives regarding activities at Non-Fund-financed State-lead Pilot sites.

As the Remedial Project manager for the Site, I have reviewed the [RI/FS, draft ROD/RD workplan, etc.] and have the comments set forth below. These comments do not, however, constitute EPA concurrence on any or all points contained in the document. The Agency has not reviewed the document in the depth necessary to make such a judgment. Because this site has been designated as a "non-Fund-financed State-lead enforcement site," EPA concurrence is not a prerequisite to a State's selecting a remedy (under State law), and EPA's concurrence has neither been requested by the State nor offered by EPA. As the National Contingency Plan regulations note, "[u]nless EPA's Assistant Administrator for Solid Waste and Emergency Response or Regional Administrator concurs in writing with a State-prepared ROD, EPA shall not be deemed to have approved the State's decision" (40 CFR 300.515(e)(20(ii)); in this case, neither the Assistant Administrator for OSWER nor the Regional Administrator has so concurred.

APPENDIX D

PILOT WORK GROUP MEMBERS

EPA Headquarters Representatives

Rick Colbert (OWPE)
Lynda Priddy (OWPE)
Helen Keplinger (OE)
Bill Ross/Ann McDonough (OERR)
Larry Starfield/Charles Openchowski (OGC)

EPA Regional Representatives

Narindar Kumar (Region 4)
Don Bruce (Region 5)
Alexis Strauss (Region 9)

State Representatives

Lance Miller (New Jersey Department of Environmental Protection)
Ursula Trueman (Utah Bureau of Environmental Response and
Remediation)
Claudia Kerbaway (Michigan Department of Natural Resources)
Alan Williams/Lee Paddock (Minnesota Inspector General's Office)

Reviewers

Ira Leighton (Region 1)
Raymond Basso (Region 2)
Abe Ferdas (Region 3)
Betty Williamson (Region 6)
Robert Morby (Region 7)
Charles Mooar (Region 8)
Kathryn M. Davidson (Region 10)

Ann Swerdel (Department of Justice)

States via mailings by ASTSWMO and NAAG

1986



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES

CN 029

TRENTON, NEW JERSEY 08625

JOHN W. GASTON JR., P.E.
DIRECTOR

DIRK C. HOFMAN, P.E.
DEPUTY DIRECTOR

IN THE MATTER OF	:	AMENDED
L. E. CARPENTER AND	:	ADMINISTRATIVE
COMPANY	:	CONSENT
	:	ORDER

This Administrative Consent Order (sometimes referred to as "1986 Administrative Consent Order") is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP") by N.J.S.A. 13:1D-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Director of the Division of Water Resources pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. L.E. Carpenter, a wholly owned subsidiary of Dayco Corporation, operates a facility located at 170 North Main Street (Block 301, Lot 1 and Block 703, Lot 30) in the Borough of Wharton, Morris County, New Jersey (hereinafter "the site" or "the facility"). L.E. Carpenter manufactures vinyl wall coverings.
2. From approximately 1963 until 1970, L.E. Carpenter disposed its wastes, including a polyvinyl chloride (PVC) waste material, into an on site impoundment. Furthermore, L.E. Carpenter used a subsurface waste disposal system in 1967 to discharge industrial waste.
3. L.E. Carpenter submitted to NJDEP a report dated October 2, 1979, concerning the characterization of the PVC waste material disposed in the impoundment and an evaluation of remedial alternatives for the impoundment. The report indicated that a chemical analysis of the PVC waste material collected from the impoundment on July 25, 1979, showed the presence of the following pollutants: di-n-butyl phthalate, diethyl phthalate, phenol,

antimony, barium, cadmium, chromium, copper, magnesium, lead and zinc.

4. On August 18, 1980, NJDEP sampled the PVC waste material in the impoundment referenced in paragraph 2. The analytical results indicated the presence of the following pollutants: antimony, barium, nickel, copper, lead, xylene, styrene, nonane, cumene, heptane, dibromomethane, mesitylene, p-cymene, butyl benzene, toluene, trichloroethylene, chloroform and benzene.
5. On August 18, 1980, NJDEP collected from ground-water monitor wells installed at the site, samples of ground water and of immiscible chemical compounds floating upon the ground water. The analytical results of these samples indicated that the ground water at the site was contaminated with immiscible (free floating) and dissolved pollutants including: 1,2 dichloroethane, trichloroethylene, toluene, ethylbenzene, styrene, dibromoethane, propyl benzene, xylene, cumene, mesitylene, cymene, tetrachloroethylene, tetrachloroethane, chlorobenzene, copper, lead, arsenic, zinc, antimony, barium and nickel.
6. On March 3, 1981 and December 7, 1981, NJDEP collected ground-water samples from a monitoring well installed at the site. Analytical results of the samples indicated the presence of 16.8 parts per millier (ppm) and 135 ppm, respectively, of polychlorinated biphenyls, a pollutant. Subsequent testing in other areas of the site did not show the presence of PCB's.
7. On January 29, 1982, L.E. Carpenter and NJDEP entered into an Administrative Consent Order (hereinafter "1982 Administrative Consent Order"), which required L.E. Carpenter to:
 - a. Remove the waste sludge from the impoundment;
 - b. Define the full extent of chemical compounds floating upon the ground water;
 - c. Decontaminate the ground water beneath the site as follows:
 - i. Remove the immiscible chemical compounds from the ground water; and
 - ii. Remove dissolved volatile organic compounds, including hazardous substances, from the ground water beneath the site; and
 - d. Monitor ground-water quality according to the following schedule:
 - i. Collect samples to be analyzed for specific volatile organic compounds every two months for a six month period beginning on or about June 1982 and quarterly thereafter; and

- ii. Take measurements every month to determine ground water flow direction(s) and the thickness of the free floating organic compounds floating upon the ground water.

On February 24, 1983, an Addendum (hereinafter "1983 Addendum") was added to the 1982 Administrative Consent Order to clarify its provisions.

8. Pursuant to the requirements of the 1982 Administrative Consent Order and the 1983 Addendum, referenced in paragraph 7 of this Administrative Consent Order, L.E. Carpenter took the following actions: In April 1982 and May 1982, L.E. Carpenter removed over 4,000 cubic yards of waste from the impoundment; thereafter L.E. Carpenter implemented a ground-water quality monitoring program. On May 11, 1984, L.E. Carpenter also began removing the immiscible chemical compounds from the top of the water table beneath the site.
9. L.E. Carpenter has not removed all of the waste from the impoundment and all of the immiscible chemical compounds from the ground water. Furthermore, L.E. Carpenter has not fully defined the extent of the groundwater pollution nor has it decontaminated the ground water.
10. Pursuant to the requirements of the 1982 Administrative Consent Order to implement a ground-water monitoring program described in paragraph 7d of this Administrative Consent Order, L.E. Carpenter submitted analytical results of samples collected and measurements taken during the period from 1982 until the winter of 1986. These results revealed the presence of the following pollutants in the ground water at the site: benzene, ethyl benzene, chloroform, butyl benzene, chlorobenzene, cumene, p-cymene, 1,2-diethyl benzene, 1-ethyl-3-methyl benzene, methylene chloride, mesitylene, nonane, propyl benzene, 1,2,3,4-tetramethyl benzene, 1,2,3,5-tetramethyl benzene, toluene, 1,2,3-trimethyl benzene, 1,2,4-trimethyl benzene and xylene. Furthermore, results submitted by L.E. Carpenter for samples collected in January, 1986, indicated the presence of the pollutants ethyl benzene, mesitylene and xylene in the ground water at the site.
11. Based on the facts set forth in the FINDINGS, NJDEP has determined that L. E. Carpenter has violated the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically, N.J.S.A. 58:10A-6, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq., specifically N.J.A.C. 7:14A-1.2(c).
12. In order to determine the nature and extent of the problem due to the discharge of pollutants at the site and to develop environmentally sound remedial actions, it is necessary to conduct additional remedial investigations as well as a feasibility study of remedial action alternatives (hereinafter "RI/FS") for the site. To correct the problems caused by the discharge it is necessary to modify the 1982 Administrative Consent Order as amended.

13. L.E. Carpenter disputes certain FINDINGS in this Administrative Consent Order. To resolve this matter without necessity for litigation, L.E. Carpenter has agreed to enter into this Amended Administrative Consent Order (hereinafter "1986 Administrative Consent Order") to conduct an RI/FS and to implement the remedial action alternative selected by NJDEP to remedy all pollution at and/or emanating from the site. By entering into this Administrative Consent Order, L.E. Carpenter does not make any admission with respect to any issue of fact, law or liability, with the exception of the ORDER provisions set forth herein below and the same does not constitute a determination or finding as to any violation of law.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AND AGREED THAT:

I. REMEDIAL INVESTIGATION, FEASIBILITY STUDY AND REMEDIAL ACTION

A. Remedial Investigation

14. Within ninety (90) calendar days after the effective date of this Administrative Consent Order, L.E. Carpenter shall submit to NJDEP a detailed draft Remedial Investigation Work Plan (hereinafter the "RI Work Plan") in accordance with Appendix A (Scope of Work), Appendix B (Site Maps) and Appendix C (Quality Assurance Requirements), which are attached hereto and made a part hereof. The RI Work Plan shall include a provision that a verification round of sampling be completed for all existing monitor wells on the system and all monitor wells installed pursuant to this Administrative Consent Order. This round of sampling shall be in accordance with Appendix C (Quality Assurance) of this Administrative Consent Order for the parameters set forth in Appendix A, Section IIC.3.e. and also for methyl ethyl ketone. The results of this round of sampling may be used to validate ground water data collected at the site by L.E. Carpenter prior to the effective date of this Administrative Consent Order, thereby enabling L.E. Carpenter to use such validated data as part of its submission required by paragraphs 17 through 28 of this Administrative Consent Order.
15. Within sixty (60) calendar days after receipt of NJDEP's written comments on the draft RI Work Plan, L.E. Carpenter shall modify the draft RI Work Plan to conform to NJDEP's comments and shall submit the modified draft RI Work Plan to NJDEP. The determination as to whether or not the modified RI Work Plan, as resubmitted, conforms to NJDEP's comments shall be made solely by NJDEP.
16. Upon receipt of NJDEP's written final approval of the RI Work Plan, L.E. Carpenter shall conduct the remedial investigation in accordance with the approved RI Work Plan and the schedule therein.

17. L.E. Carpenter shall submit to NJDEP a draft Remedial Investigation Report (hereinafter "RI Report") in accordance with Appendix A and the RI Work Plan and the schedule therein.
18. If upon review of the draft RI Report, NJDEP determines that additional remedial investigation is required, L.E. Carpenter shall conduct additional remedial investigation as directed by NJDEP and submit a second draft RI Report.
19. Within sixty (60) calendar days after receipt of NJDEP's written comments on the draft or second draft (if applicable pursuant to the preceding paragraph) RI Report, L.E. Carpenter shall modify the draft or second draft RI Report to conform to NJDEP's comments and submit the modified RI Report to NJDEP. The determination as to whether or not the modified RI Report, as resubmitted, conforms with NJDEP comments, shall be made solely by NJDEP.

B. Feasibility Study

20. Within sixty (60) calendar days after receipt of NJDEP's written final approval of the RI report, or as otherwise directed by NJDEP, L.E. Carpenter shall submit to NJDEP a draft Feasibility Study Work Plan (hereinafter "FS Work Plan") in accordance with the scope of work set forth in Appendix D which is attached hereto and made a part hereof.
21. Within sixty (60) calendar days after receipt of NJDEP's written comments on the draft FS Work Plan, L.E. Carpenter shall modify the draft FS Work Plan to conform to NJDEP's comments and shall submit the modified draft FS Work Plan to NJDEP. The determination as to whether the modified FS Report, as resubmitted, conforms to NJDEP's comments shall be made solely by NJDEP.
22. Upon receipt of NJDEP's written final approval of the FS Work Plan, L.E. Carpenter shall complete the feasibility study in accordance with the approved FS Work Plan and the schedule therein.
23. L.E. Carpenter shall submit to NJDEP a draft Feasibility Study Report (hereinafter "FS Report") in accordance with Appendix D and the FS Work Plan and the schedule therein. The scope of the draft Feasibility Study may be focused to take into account the interim remedial action contained in the Ground-Water Decontamination Plan referenced in Paragraph 69 of this Administrative Consent Order and previous remedial action taken by L.E. Carpenter at the site.
24. Within ninety (90) calendar days after receipt of the NJDEP's written comments on the draft FS Report, L.E. Carpenter shall modify the draft FS Report to conform to NJDEP's comments and shall submit the modified FS Report to NJDEP. The determination as to whether or not the modified FS Report, as resubmitted, conforms to the NJDEP's comments shall be made solely by NJDEP.

C. Remedial Action

25. NJDEP will make the final selection of the remedial action alternative.
26. Within ninety (90) calendar days after receipt of NJDEP's written notification of selection of a remedial action alternative, L.E. Carpenter shall submit to NJDEP, a detailed draft Remedial Action Plan in accordance with the scope of work set forth in Appendix E, which is attached hereto and made part hereof.
27. Within sixty (60) calendar days after receipt of NJDEP's written comments on the draft Remedial Action Plan, L.E. Carpenter shall modify the draft Remedial Action Plan to conform to NJDEP's comments and shall submit the modified draft Remedial Action Plan to NJDEP. The determination as to whether or not the modified Remedial Action Plan, as resubmitted, conforms to NJDEP's comments shall be made solely by NJDEP.
28. Upon receipt of NJDEP's written final approval of the Remedial Action Plan, L.E. Carpenter shall implement the approved Remedial Action Plan in accordance with the approved schedule therein.

D. Additional Remedial Investigation and Remediation

29. If NJDEP determines at any time that additional remedial investigation and/or remediation is required to protect human health or the environment, L.E. Carpenter shall conduct such additional activities as directed by NJDEP.

E. Permits

30. Within thirty (30) calendar days after the effective date, L.E. Carpenter shall submit a completed New Jersey Pollutant Discharge Elimination System (NJPDES) permit application pursuant to N.J.A.C. 7:14A-1 et seq. if required under the regulations for any present discharge into the Rockaway River not permitted.
31. L.E. Carpenter shall submit complete applications for all Federal, State and local permits required to carry out the obligations of this Administrative Consent Order in accordance with the approved time schedules.
32. Within thirty (30) calendar days of receipt of written comments concerning any permit application to a Federal, State or local agency, L.E. Carpenter shall modify the permit application to conform to the agency's comments and resubmit the permit application to the agency. The determination as to whether or not the permit application, as resubmitted, conforms with the agency's comments shall be made solely by the agency. L.E. Carpenter reserves all rights which it may have under applicable statutes and regulations to contest the provisions of any proposed permit. L.E. Carpenter's rights under N.J.A.C. 7:14A to contest any permits are not affected by this Administrative Consent Order;

provided, however, that L.E. Carpenter shall comply with this Administrative Consent Order.

33. Compliance with the terms of this Administrative Consent Order shall not relieve L.E. Carpenter from obtaining and complying with all applicable Federal, State and local permits and complying with all applicable statutes and regulations while carrying out the obligations imposed by this Administrative Consent Order.
34. The execution of this Administrative Consent Order shall not preclude NJDEP from requiring that L.E. Carpenter apply for any permit or permit modification issued by NJDEP under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and/or any other statutory authority for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Administrative Consent Order even if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order. L.E. Carpenter reserves all rights which it may have under applicable statutes and regulations to contest the provisions of any proposed permit. L.E. Carpenter's rights under N.J.A.C. 7:14A to contest any permits are not affected by this Administrative Consent Order; provided, however, that L.E. Carpenter shall comply with this Administrative Consent Order.

F. Progress Reports

35. L.E. Carpenter shall submit to NJDEP quarterly progress reports; the quarters being January through March, April through June, July through September, and October through December of each calendar year. Each progress report shall be submitted on or before the thirtieth (30th) day of the month following the quarter being report. L.E. Carpenter shall submit the first progress report to NJDEP by October 30, 1986, for the July - September 1986 quarter. Each progress report shall detail the status of L.E. Carpenter's compliance with this Administrative Consent Order and shall include the following:
 - a. Identification of the site and reference to this Administrative Consent Order;
 - b. Status of work at the site and progress to date, including all data collected and field observations made;
 - c. Maps depicting isopachs of the thickness of immiscible chemical compounds in the aquifer and contour maps showing elevations of ground water and the top of the immiscible floating compounds;
 - d. Difficulties or problems encountered during the reporting period;

- e. Actions taken or to be taken to rectify difficulties or problems;
- f. List required and actual completion dates for each item required by Administrative Consent Order;
- g. Provide an explanation of any deviation from the approved work plan, Remedial Action Plan or schedule;
- h. Conclusions and recommendations drawn from the data and from observations; and
- i. A discussion of performance evaluation of all remedial measures implemented.

II. PROJECT COORDINATION

- 36. L.E. Carpenter shall submit to NJDEP all documents required by this Administrative Consent Order, including correspondence relating to force majeure issues, by certified mail, return receipt requested or by hand delivery and with an acknowledgement of receipt form for NJDEP's signature. The date that NJDEP executes the receipt or acknowledgement will be the date NJDEP uses to determine L.E. Carpenter's compliance with the requirements of this Administrative Consent Order and the applicability of stipulated penalties.
- 37. Within seven (7) calendar days after the effective date of this Administrative Consent Order, L.E. Carpenter shall submit to NJDEP the name, title, address and telephone number of the individual who will be NJDEP's contact with L.E. Carpenter for all matters concerning this Administrative Consent Order. L.E. Carpenter shall contact the individual identified in paragraph 39 for all matters concerning this Administrative Consent Order.
- 38. L.E. Carpenter shall notify NJDEP verbally at least two (2) weeks prior to commencement of any field related activities pursuant to this Administrative Consent Order by telephoning (201) 299-7592 during normal business hours (9:00 a.m. to 5:00 p.m.). A written notification shall follow within five (5) calendar days of the verbal notification.
- 39. L.E. Carpenter shall submit four (4) copies of all documents required by this Administrative Consent Order to:

Joseph M. Mikulka, Chief
Northern Bureau of Regional Enforcement
Division of Water Resources
1259 Route 46 - Building 2
Parsippany, New Jersey 07054

III. FINANCIAL REQUIREMENTS

A. Stipulated Penalties

40. L.E. Carpenter shall pay stipulated penalties to NJDEP for their failure to comply with this Administrative Consent Order according to the following schedule, unless NJDEP has modified the compliance date pursuant to the force majeure provisions hereinbelow:
- a. Compliance one (1) to five (5) calendar days late: \$500/calendar day penalty.
 - b. Compliance six (6) to ten (10) calendar days late: \$1,000/calendar day penalty.
 - c. Compliance eleven (11) to twenty (20) calendar days late: \$1,500/calendar day penalty.
 - d. Compliance twenty-one (21) calendar days late and subsequent thereafter: \$2,500/calendar day penalty.
41. Any such penalty shall be due and payable fourteen (14) calendar days following receipt of a written demand by NJDEP. Payment of such stipulated penalties shall be made by cashier's or certified check payable to the "Treasurer, State of New Jersey." Each payment of a stipulated penalty shall include a letter describing the basis for the penalty.

B. Financial Assurance

42. Within twenty-one (21) calendar days after the effective date of this Administrative Consent Order, L.E. Carpenter shall submit to NJDEP a proposed irrevocable letter of credit which meets the following requirements:
- a. Is identical to the wording specified in Appendix F which is attached hereto and made part hereof;
 - b. Is issued for one (1) year and in the event that the issuing bank or financial institution is subject to Title 17 of the Revised Statutes of New Jersey, shall not be automatically renewable but shall be renewable upon reapplication and review only;
 - c. Is issued by a New Jersey State or Federally chartered bank, savings bank, or savings and loan association which has its principal office in New Jersey.
43. Within twenty-one (21) calendar days after the effective date of this Administrative Consent Order, L.E. Carpenter shall submit a proposed irrevocable standby trust fund agreement which meets the following requirements:

- a. Is identical to the wording specified in Appendix G which is attached hereto and made part hereof;
 - b. The irrevocable standby trust fund shall be the depository for all funds pursuant to a draft by NJDEP against the letter of credit;
 - c. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency;
 - d. Is accompanied by a certification of acknowledgement that is identical to the wording specified in Appendix G which is attached hereto and made part hereof.
44. Within fourteen (14) calendar days after receipt of NJDEP's written comments on the proposed letter of credit, the proposed trust agreement, and the proposed certification of acknowledgement, L.E. Carpenter shall modify the documents to conform to NJDEP's comments and resubmit them to NJDEP.
45. Within fourteen (14) calendar days after receipt of NJDEP's written approval of the letter of credit, the trust agreement, and the certification of acknowledgement, L.E. Carpenter shall:
- a. Obtain and provide to NJDEP the irrevocable letter of credit in the amount of \$1,000,000.
 - b. Establish the irrevocable standby trust fund and deposit an initial amount of \$1,000 into the irrevocable standby trust fund; and
 - c. Submit an originally signed duplicate of the trust agreement to NJDEP accompanied by the certification of acknowledgement.
46. L.E. Carpenter shall maintain the letter of credit and the standby trust fund until NJDEP notifies the issuing institution and the trustee in writing that either L.E. Carpenter performed all of its obligation imposed by this Administrative Consent Order to NJDEP's satisfaction or has substituted other financial assurance acceptable to NJDEP. In the event that NJDEP determines that L.E. Carpenter has failed to perform any of its obligations under this Administrative Consent Order, NJDEP may draw on the letter of credit; provided, however, that before any draw can be made, NJDEP shall notify L.E. Carpenter in writing of the obligation(s) which it has not performed, and L.E. Carpenter shall have a reasonable time, not to exceed fourteen (14) calendar days, to perform such obligation(s).
47. At any time, L.E. Carpenter may apply to NJDEP to substitute other financial assurances in a form, manner and amount acceptable to NJDEP.

C. Cost Review

48. Beginning three hundred sixty-five (365) calendar days after the effective date of this Administrative Consent Order and annually thereafter on that same calendar day, L.E. Carpenter shall submit to NJDEP a detailed review of all costs required for L.E. Carpenter's compliance with this Administrative Consent Order. This cost review shall include all monies spent to date pursuant to this Administrative Consent Order, the estimated cost of all future expenditures required to comply with this Administrative Consent Order (including any operation and maintenance costs), and the reason for any changes from the previous cost review submitted by L.E. Carpenter.
49. At any time after L.E. Carpenter submits the first cost review, pursuant to the proceeding paragraph, L.E. Carpenter may request approval from NJDEP to reduce the amount of the letter of credit to reflect remaining costs of performing its obligations under this Administrative Consent Order. If NJDEP grants written approval of the request, L.E. Carpenter may amend the amount of the existing letter of credit.
50. If the estimated cost of L.E. Carpenter with meeting its obligations in this Administrative Consent Order at any time exceeds the amount of the letter of credit, L.E. Carpenter shall, within fifteen (15) calendar days after receipt of written notice of NJDEP's determination, increase the amount the then existing letter of credit so that it is equal to the estimated cost as determined by NJDEP.

D. Oversight Cost Reimbursement

51. Within thirty (30) calendar days after receipt from NJDEP of an itemized accounting of its costs incurred in connection with its oversight functions of Administrative Consent Order for a fiscal year, or any part thereof, L.E. Carpenter shall submit to NJDEP a certified check payable to the "Treasurer, State of New Jersey" for the full amount of NJDEP's oversight costs.
 - a. For the purposes of this paragraph 51, oversight costs shall include, but not be limited to, hourly rates and hours worked by each individual and fringe benefits and overhead for monitoring L.E. Carpenter's compliance with this Administrative Consent Order, reviewing and presenting comments to L.E. Carpenter on materials submitted by L.E. Carpenter, and conducting on site inspections; sampling and analysis costs; and copy costs. NJDEP shall not act unreasonably in incurring any such oversight costs.
 - b. L.E. Carpenter agrees to pay NJDEP oversight costs pursuant to this paragraph 51 not to exceed \$15,000 ("annual allotment") per fiscal year (July 1 - June 30) for a total not to exceed \$75,000 for all oversight costs under this Administrative Consent Order. The aforesaid limitation on oversight costs of \$75,000 applies to L.E. Carpenter's agreement

with regard to this Administrative Consent Order. However, NJDEP expressly reserves the right to take whatever action it deems necessary to seek reimbursement of any additional costs in connection with its oversight function of this Administrative Consent Order which exceed the amounts paid by L.E. Carpenter pursuant to this Administrative Consent Order for which L.E. Carpenter may be liable. Any such action taken by NJDEP shall not be encompassed within this Administrative Consent Order. L.E. Carpenter reserves any rights it may have to contest any such actions by NJDEP and said rights shall not be limited by any provision of this Administrative Consent Order.

- c. If in any fiscal year NJDEP expends less than the annual allotment, the difference between the annual allotment and the amount expended shall be carried over and added to the annual allotment for the succeeding fiscal year to establish an increased allotment for that succeeding fiscal year.
- d. If in any fiscal year NJDEP expends and presents an itemized accounting of oversight costs greater than the annual allotment, L.E. Carpenter shall pay NJDEP the excess over the annual allotment by August 1 in the succeeding fiscal years up to the annual allotment for each fiscal year until all oversight costs not to exceed \$75,000 are paid to NJDEP. In no event does L.E. Carpenter agree to pay more than \$15,000 for NJDEP's oversight costs in any one (1) fiscal year.

V. FORCE MAJEURE

- 52. If any event occurs which L.E. Carpenter believes will or may cause delay in the achievement of any provision of this Administrative Consent Order, L.E. Carpenter shall notify NJDEP, in writing, within seven (7) calendar days of the delay or anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay and the time required to take any such measures to minimize the delay. L.E. Carpenter shall take all necessary action to prevent or minimize any such delay.
- 53. If NJDEP finds that: (a) L.E. Carpenter has complied with the notice requirements of the preceding paragraph; and (b) that any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of L.E. Carpenter, NJDEP shall extend the time for performance hereunder for a period no longer than the delay resulting from such circumstances. Approval for any request for any extension shall not be unreasonably withheld. If NJDEP determines that either L.E. Carpenter has not complied with the notice requirements of the preceding paragraph, or the event causing the delay is not beyond the control of L.E. Carpenter, failure to comply with the provisions of this Administrative Consent Order shall

constitute a breach of the requirements of this Administrative Consent Order. The burden of proving that any delay is caused by circumstances beyond the control of L.E. Carpenter and the length of any such delay attributable to those circumstances shall rest with L.E. Carpenter. Increases in the cost or expenses incurred by L.E. Carpenter, which are both unreasonable and significant, in fulfilling the requirements of this Administrative Consent Order shall not solely be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. All determinations under this Paragraph shall be in writing and accompanied by specific findings.

VI. GENERAL PROVISIONS

54. This Administrative Consent Order shall be binding on L.E. Carpenter, its principals, directors, officers, agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
55. All work conducted pursuant to this Administrative Consent Order shall be performed in accordance with prevailing professional standards.
56. All actions performed by L.E. Carpenter in implementing this Administrative Consent Order shall be in compliance with all applicable Federal, State and local laws and regulations, including, but not limited to, the National Contingency Plan, 40 C.F.R. Part 300, 50 Fed. Reg. 47911. L.E. Carpenter shall be responsible for obtaining all necessary permits, licenses and other authorizations.
57. All appendices referenced in this Administrative Consent Order, as well as the RI Report, the FS Report, and all other reports, work plans and documents required under the terms of this Administrative Consent Order are, upon approval by NJDEP, incorporated into this Administrative Consent Order by reference and made a part hereof.
58. L.E. Carpenter shall make available to NJDEP all data and information, including raw sampling and monitoring data, concerning pollution at and/or emanating from the site.
59. L.E. Carpenter shall make available to NJDEP all technical records and contractual documents maintained or created by L.E. Carpenter or its contractors in connection with this Administrative Consent Order.
60. L.E. Carpenter shall preserve, during the pendency of this Administrative Consent Order and for a minimum of six (6) years after its termination, all non-privileged data, records and documents in their possession or in the possession of their employees, or contractors which relate in any way to the implementation of work under this Administrative Consent Order, despite any document retention policy to the contrary. After

this six (6) year period, L.E. Carpenter shall notify NJDEP within thirty (30) calendar days prior to the destruction of any such documents. If NJDEP requests in writing that some or all of the documents be preserved for a longer period, L.E. Carpenter shall comply with that request. Upon request by NJDEP, L.E. Carpenter shall make available to NJDEP such non-privileged records or copies of any such non-privileged records.

61. No obligations imposed by this Administrative Consent Order, with the exception of paragraphs 37 and 38 are intended to constitute a debt, damage claim, penalty or other civil action which should be limited or discharged in a bankruptcy proceeding. All obligations imposed by this Administrative Consent Order shall constitute continuing regulatory obligations imposed pursuant to the police powers of the State of New Jersey, intended to protect human health or the environment.
62. In addition to NJDEP's statutory and regulatory rights to enter and inspect, L.E. Carpenter shall allow NJDEP and its authorized representatives access to the site at all times upon the giving of reasonable notice by NJDEP to L.E. Carpenter, for the purpose of monitoring L.E. Carpenter's compliance with this Administrative Consent Order.
63. NJDEP reserves the right to require L.E. Carpenter to take additional actions should NJDEP determine that such actions are necessary to protect human health or the environment. L.E. Carpenter reserves the rights it may have to contest or defend itself against additional actions taken by NJDEP. Nothing in this Administrative Consent Order shall constitute a waiver of any statutory right of NJDEP pertaining to any laws of the State of New Jersey, should NJDEP determine that such measures are necessary.
64. L.E. Carpenter shall not construe any informal advice, guidance, suggestions, or comments by NJDEP or by persons acting on behalf of NJDEP as relieving L.E. Carpenter of its obligation to obtain written approvals as may be required herein, unless such advice, guidance, suggestions, or comments by NJDEP shall be submitted in writing to L.E. Carpenter.
65. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment to this Administrative Consent Order duly executed by L.E. Carpenter and NJDEP.
66. L.E. Carpenter hereby consents to and agrees to comply with this Administrative Consent Order which shall be fully enforceable as an Order in the New Jersey Superior Court upon the filing in a summary manner for compliance pursuant to N.J.S.A. 13:1D-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; provided, however, L.E. Carpenter reserves its right to defend itself in any summary proceeding initiated by NJDEP or the State of New Jersey pursuant to this paragraph.

67. L.E. Carpenter agrees not to contest the authority or jurisdiction of NJDEP to issue this Administrative Consent Order and also agrees not to contest the terms of this Administrative Consent Order except as to interpretation of the same in any action to enforce its provisions.
68. The requirements of this Administrative Consent Order shall be deemed satisfied upon receipt by L.E. Carpenter of written notice from NJDEP that L.E. Carpenter has demonstrated, to the satisfaction of NJDEP, that all terms of this Administrative Consent Order have been completed.
69. This 1986 Administrative Consent Order shall supersede the January 29, 1982 Administrative Consent Order and the Addendum of February 24, 1983 except that all requirements for L.E. Carpenter contained in L.E. Carpenter's proposal entitled, "Ground-Water Decontamination Plan," dated October 31, 1983, as approved with conditions by NJDEP on January 26, 1984 (pursuant to the January 29, 1982 Administrative Consent Order and the Addendum of February 24, 1983) are incorporated herein by reference and shall continued in full force and effect until NJDEP otherwise notifies L.E. Carpenter in writing.
70. L.E. Carpenter shall use its best efforts to gain access to property not owned by it, where necessary, to comply with this Administrative Consent Order.
71. This Administrative Consent Order shall become effective upon the execution hereof by all parties.

BY THE AUTHORITY OF
GEORGE G. MCCANN
ACTING DIRECTOR
DIVISION OF WATER RESOURCES

DATE: SEP 26 1986

BY: James E. Mumman
James E. Mumman
Acting Assistant Director
Enforcement Element

L. E. CARPENTER AND COMPANY

DATE: Sept. 10, 1986

BY: L. G. Felfoldy
NAME: Louis G. Felfoldy
TITLE: Vice President, Manufacturing

EXHIBIT A
Metes and Bounds Description of
Property

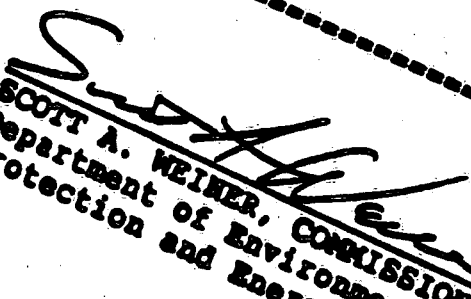
EXHIBIT B
Decision Document

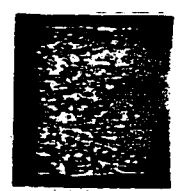
EXHIBIT C
Metes and Bounds Description of
Affected Areas

EXHIBIT D
Type, Concentration and Location of contaminants
[List concentrations]

Type, Concentration	Location
[List concentrations]	[Describe location of contaminants by reference to survey attached Exhibit D]

EXHIBIT E
Survey Plat of the Property


SCOTT A. WEINER, COMMISSIONER
Department of Environmental
Protection and Energy





State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW

RICHARD J. HUGHES JUSTICE COMPLEX
CN 093
TRENTON 08625

ROBERT J. DEL TUFO
ATTORNEY GENERAL

EDWARD J. DAUBER
ASSISTANT ATTORNEY GENERAL
DIRECTOR

609-984-4654

June 25, 1992

Douglas R. Blazey, Esq.
Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10278

Re: Pilot Agreement between the United States Environmental
Protection Agency and the New Jersey Department of
Environmental Protection and Energy for the L.E. Carpenter
site dated *July 10*, 1992

Dear Mr. Blazey:

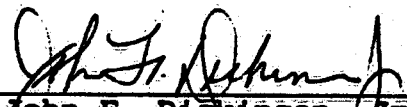
In accordance with the requirements of Section II B 2b of the above referenced Pilot Agreement ("Agreement"), this office certifies that the New Jersey Department of Environmental Protection and Energy's Administrative Consent Order ("ACO") with the potential responsible parties for the L.E. Carpenter site was entered into pursuant to N.J.S.A. 13:1D-1 et seq. and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and that, as such, the ACO is enforceable under State law. Additionally, this letter shall serve as a certification that the State's authority is sufficient to produce a "CERCLA-quality cleanup" at the L.E. Carpenter site as that term is described in the EPA's Final Rule for National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 55 FR 8666, 8793 (March 8, 1990). In fact, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. requires that the "removal of hazardous substances and actions to minimize damages from discharges shall, to the greatest extent possible, be in accordance with the [NCP]". N.J.S.A. 58:10-23.11f a. This standard is generally regarded as substantially the same as that required of EPA in Section 121 (a) of CERCLA. The Spill Act and its directive and treble damages provisions (enforcement mechanism) were held

constitutional in Matter of Kimber Petroleum Corp., 110 N.J. 69 (1988).

Other potentially applicable state authorities include: the New Jersey Solid Waste Mangement Act, N.J.S.A. 13:1E-1 et seq. and its implementing regulations, N.J.A.C. 7:26-1.1 et seq. (regulating, pursuant to RCRA delegation authority, the generation, transportation, treatment, storage and disposal of hazardous waste); the New Jersey Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. and its implementing regulations, N.J.A.C. 7:26B-1.1 et seq. (prohibiting the transfer of industrial establishments without a DEPE approved cleanup plan); and the New Jersey Underground Storage Tank Act, N.J.S.A. 58:10A-21 et seq. and its implementing regulations, N.J.A.C. 7:14b-1.1 et seq. (requiring the registration of underground storage tanks containing the hazardous substances, prescribing the operation and maintenance activities required for such tanks, and requiring the cleanup of discharges of hazardous substances therefrom).

Should you have any questions concerning the above, please feel free to contact the undersigned at 609-984-4654.

ROBERT J. DEL TUFO
ATTORNEY GENERAL OF NEW JERSEY

By: 
John F. Dickinson, Jr.
Deputy Attorney General

c: Lance R. Miller, Assistant Commissioner
Site Remediation Program, NJDEPE



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW

RICHARD J. HUGHES JUSTICE COMPLEX
CN 093
TRENTON 08625

EDWARD J. DAUBER
ASSISTANT ATTORNEY GENERAL
DIRECTOR

ROBERT J. DEL TUFO
ATTORNEY GENERAL

609-984-4654

June 25, 1992

Douglas R. Blazey, Esq.
Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10278

Re: Pilot Agreement between the United States Environmental
Protection Agency and the New Jersey Department of
Environmental Protection and Energy for the Hercules
(Gibbsboro, New Jersey) site dated *July 10* 1992

Dear Mr. Blazey:

In accordance with the requirements of Section II B 2b of the above referenced Pilot Agreement ("Agreement"), this office certifies that the New Jersey Department of Environmental Protection and Energy's Administrative Consent Order ("ACO") with the potential responsible party for the Hercules (Gibbsboro, New Jersey) site was entered into pursuant to N.J. S.A. 13:1D-1 et seq. and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and that, as such, the ACO is enforceable under State law. Additionally, this letter shall serve as a certification that the State's authority is sufficient to produce a "CERCLA-quality cleanup" at the Hercules site as that term is described in the EPA's Final Rule for National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 55 FR 8666, 8793 (March 8, 1990). In fact, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. requires that the "removal of hazardous substances and actions to minimize damages from discharges shall, to the greatest extent possible, be in accordance with the [NCP]". N.J.S.A. 58:10-23.11f a. This standard is generally regarded as substantially the same as that required of EPA in Section 121 (a) of CERCLA. The Spill Act and its directive and treble damages provisions (enforcement mechanism) were held

constitutional in Matter of Kimber Petroleum Corp, 110 N.J. 69 (1988).

Other potentially applicable state authorities include: the New Jersey Solid Waste Mangement Act, N.J.S.A. 13:1E-1 et seq. and its implementing regulations, N.J.A.C. 7:26-1.1 et seq. (regulating, pursuant to RCRA delegation authority, the generation, transportation, treatment, storage and disposal of hazardous waste); the New Jersey Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. and its implementing regulations, N.J.A.C. 7:26B-1.1 et seq. (prohibiting the transfer of industrial establishments without a DEPE approved cleanup plan); and the New Jersey Underground Storage Tank Act, N.J.S.A. 58:10A-21 et seq. and its implementing regulations, N.J.A.C. 7:14b-1.1 et seq. (requiring the registration of underground storage tanks containing the hazardous substances, prescribing the operation and maintenance activities required for such tanks, and requiring the cleanup of discharges of hazardous substances therefrom).

Should you have any questions concerning the above, please feel free to contact the undersigned at 609-984-4654.

ROBERT J. DEL TUFO
ATTORNEY GENERAL OF NEW JERSEY

By: 

John F. Dickinson, Jr.
Deputy Attorney General

c: Lance R. Miller, Assistant Commissioner
Site Remediation Program, NJDEPE

EPA/STATE PILOT AGREEMENT

The New Jersey Department of Environmental Protection and Energy and the Environmental Protection Agency (EPA), Region II, hereby enter into the following Agreement for the EPA/State Pilot Project. This agreement concerns the Hercules Incorporated - Higgins Plant facility located in Gibbsboro, Gloucester County, N.J..

I. INTRODUCTION - PURPOSE

A. INTRODUCTION

This agreement is entered into by the United States Environmental Protection Agency, Region II (EPA), and the State of New Jersey, Department of Environmental Protection and Energy (NJDEPE), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and the Spill Compensation and Control Act, the Water Pollution Control Act, and the Solid Waste Management Act. EPA and the State of New Jersey agree to comply with all the provisions specified in this Agreement.

B. PURPOSE

This Agreement delineates the respective roles and responsibilities of each Party as they relate to the conduct of the EPA/State Pilot Project at Hercules Incorporated - Higgins Plant, (hereinafter "the facility") Gibbsboro, New Jersey. A description of the Pilot Project is attached (see Appendix A.) To the extent a Superfund Memorandum of Agreement (SMOA) between NJDEPE and EPA is in affect, this Agreement supercedes the SMOA for the designated sites.

II. AGREEMENT

NOW, THEREFORE, IT IS AGREED THAT:

A. Lead Agency Designation

1. When the State is the lead agency:

The NJDEPE is the lead State agency for response activities at the facility pursuant to section 300.515(e)(2) of the NCP. The State of New Jersey Site Remediation Program is implemented under the Spill Compensation and Control Act, NJSA 58:10, the Water Pollution Control Act, NJSA 58:10A, and the Solid Waste Management Act, NJSA 13:1E.

B. Lead Agency Responsibilities

1. **When either the EPA or the State is the lead agency:**
 - a. **For sites in the pre-remedy selection stage, the lead agency has the option of selecting and implementing the remedy without support agency concurrence. Alternatively, the lead agency has the option of seeking support agency concurrence on the remedy, but the support agency may decline to concur. Unless the Assistant Administrator of the Office of Solid Waste and Emergency Response (AA/OSWER) or Regional Administrator (RA) concurs in writing, EPA shall not be deemed to have approved the State remedy. Section 300.515(e)(2) of the NCP allows States to select the remedy without EPA concurrence where the site has been designated as a non-Fund-financed State-lead enforcement site (i.e., the State is proceeding under State authority and without Superfund monies at that site).**
 - b. **The NJDEPE is not a PRP at the Pilot Site, Hercules Incorporated-Higgins Plant, Gibbsboro.**
 - c. **An enforceable order or two-party order (Attachment #1) between the lead Agency and a PRP is in place at the site. The agreement contains the PRP's agreement to:**
 - i. **complete the current stage of the project (RI/FS, RD/RA);**
 - ii. **complete its activities in accordance with an enforceable schedule (see Section G);**
 - iii. **be subject to lead agency approval of major deliverables, such as the work plans, the RI, and the FS. The agreement provides some mechanism for the lead's ability to revise, or require PRPs to modify, deliverables in accord with the lead's comments; and**
 - iv. **demonstrate resource availability (e.g., financial viability) to complete the requirements of the agreement.**
 - d. **The order or two-party agreement provides for the lead's recourse for PRP non-compliance (e.g., statutory or stipulated penalties, some form of financial assurances).**
 - e. **Lead and support agencies reserve all rights provided them by relevant State law, the NCP and CERCLA, including the right of the State of New Jersey to seek the enhancement of remedies selected by EPA at EPA-lead sites. However, certain authorities, protections, exemptions and waivers afforded by CERCLA (e.g., waiver of permits or federal ARARs) are not available for cleanups conducted under State law (i.e., State-lead Pilot sites).**

- f. Enforcement actions taken in response to noncompliance with executed enforceable agreements/orders between the lead agency and PRPs will be timely and pursued to resolution in accordance with applicable State and Federal laws, applicable policies and guidelines.
- g. The lead agency has primary responsibility for communications with PRPs regarding the site. To the extent practicable, support agency communication with PRPs, regarding responsibilities at the site, will not take place without prior notice to the lead agency.
- h. The lead agency agrees to conduct 5-year review(s) as appropriate to determine whether:
 - i. the remedy will function.
 - ii. standards and information have changed.
 - iii. the remedy is still protective.
- 2. When the State is the lead agency:
 - a. The State of New Jersey commits to:
 - i. achieve a remedy that would result in a CERCLA-quality cleanup (as discussed in Subpart H of the NCP and 55 FR 8793).
The State of New Jersey may choose to select remedies that comply with stricter cleanup standards i.e., "substantial compliance with" or "not inconsistent with the NCP" instead of a remedy that would result in a CERCLA-quality cleanup. If a "CERCLA-quality cleanup" is achieved, it is generally expected that no further response action will be necessary, and that the site will be considered for deletion from the NPL.
 - ii. provide for meaningful public participation (as defined in Subpart H).
 - iii. compile an administrative record for the selection of the remedy (as defined in Subpart I). The Administrative Record will be reviewed by a New Jersey Deputy Attorney General to ensure compliance with the NCP and CERCLA prior to its release.

In Appendix B, the State presents its demonstration that the State has the technical and administrative ability to perform a CERCLA-quality cleanup, as specified in Section B.2.a. above.

- b. The Attorney General of the State of New Jersey has certified in a letter that the agreement is enforceable under State law and that

State authority is sufficient to produce a CERCLA-quality cleanup. The certification letter includes citations to statutory and regulatory authority and any relevant case law upholding such authority. Attachment (#2) of this Agreement is a copy of the letter from the State Attorney General certifying such authority.

- c. In the Record of Decision or equivalent document, the State as lead agency agrees to demonstrate, in writing, how the remedy it has chosen results in a CERCLA-quality cleanup where State actions were not expressly consistent with the NCP. The demonstration must address the need for a risk assessment or some alternative to a risk assessment as a means for demonstrating that the protectiveness component of a CERCLA-quality cleanup has been achieved.

In the case where a ROD or equivalent document has not been completed by the end of the Pilot period (two years from initiation of the Pilot), the State agrees to demonstrate, to the extent feasible, how the State process and requirements would result in a CERCLA-quality cleanup.
- d. EPA can take over as lead agency or increase its level of involvement if:
 - i. lead and support agencies mutually agree.
 - ii. the conditions for lead designation are not achieved or maintained during the pilot including meeting dates scheduled in the Pilot Site Agreement (also see Sections E. Selecting Pilot Sites and F. Lead and Support Roles for the Pilot).
 - iii. the remedy selected by State is not protective of human health and the environment.
 - vi. State actions pose or may pose an imminent and substantial endangerment to public health or the environment.
- e. If there is a cooperative agreement for the site, the State agrees not to expend money from the cooperative agreement, once this Pilot Agreement is signed or in the future, if the State is designated as lead for a Pilot site.
- C. Support Agency Responsibilities. When either EPA or the State is the support agency.
 - 1. The support agency will be kept informed of activities at the site (quarterly progress reports) and receive copies of (and have the opportunity to provide comments on) major deliverables and the proposed remedy, as specified in Section E.3. below.

2. Support agency concurrence is not required for remedy selection or implementation and may not be implied.
- D. Points of Contact - The points of contact will be the Chief, Bureau of Federal Case Management, for the NJDEPE and the Branch Chief, New Jersey CERCLA Enforcement Branch, for the EPA.
- E. Planning/Coordination/Review Processes
 1. ARARs/TBCs Process -

The lead agency will solicit ARARs from the support agency for each pilot site in accordance with the schedule in Section G. Generally, the support agency must identify and submit ARARs to the lead agency within 30 working days of a written request for these ARARs unless otherwise mutually agreed to by the lead and support agencies. If disagreements arise over ARARs, the procedures in Section E.6., below, are to be followed.
 2. Administrative Record -

The lead agency is responsible for compiling and maintaining the Administrative Record file pursuant to Subpart I of the NCP. It is the responsibility of the lead agency to see that a copy of each relevant document is sent to the appropriate location for maintenance of the Administrative Record file. The Administrative Record file should contain all materials necessary to support lead agency decisions.
 3. Deliverables and Record of Decision -

The lead agency shall submit draft reports to the support agency. If the support agency chooses to comment, comments shall be submitted to the lead agency within 30 working days of receipt of the deliverable (unless another period is agreed to by the lead and support agencies).

The lead agency must provide the support agency the following documents (or State equivalent):

 - a. Final RI report (including identification of ARAR's)
 - b. Final FS report
 - c. Draft proposed plan
 - d. Final pre-signature ROD, ROD amendments and responsiveness summary

e. **Final RD and RA documents**

The lead agency shall respond to the support agency's written comments in writing, only in the Draft Proposed Plan and the Final Pre-signature ROD phases. When EPA is the support agency, EPA review comments submitted to the State shall include disclaimer language as specified in Appendix C. The disclaimer language specifies that EPA's review and comment on NJDEPE documents do not constitute EPA concurrence on any or all points contained in those documents.

The State may choose to include similar disclaimer language in its review comments to EPA when the State is the support agency.

4. **Concurrence on Lead Agency RODs -**

Support agency concurrence on lead agency RODs is not required. However, the lead agency may request support agency concurrence. ROD signature or other written approval by the designated support agency official (AA/OSWER or RA where EPA is the support agency) is required to confer ROD concurrence.

5. **Deletion from the NPL -**

At all State-lead, non-fund financed Pilot sites, after completion of appropriate remedial action, the State will prepare and submit to EPA a close-out report and deletion package for EPA review and approval. The lead agency agrees to comply with relevant portions of the completion/deletion guidance (Directive #s 9320.2-3A and 9320.2-3B). EPA non-concurrence on a State lead ROD will not preclude EPA review and approval of a site close-out report.

6. **Management Review Process -**

In the event of disagreements between EPA and the State concerning the Pilot Project, the State Case Manager and EPA Regional Project Manager will attempt to resolve such disagreements promptly. If disagreements can not be resolved at this level, the problem will be referred to the supervisors of these individuals for further consultation. This supervisory referral and resolution process will continue, if necessary, to the level of Regional Administrator for the EPA, and the Commissioner for the State. If agreement still can not be reached, the lead agency makes the final decision on deliverables and the remedy.

7. **Pilot Evaluation**

1. The period of the Pilot will be two years, ending July 31, 1994. There will be an interim evaluation after one year, an interim report after 18 months and a final evaluation at the end of the two years. The evaluations will be conducted by EPA headquarters.

The lead and support agencies will cooperate in providing information for the evaluation.

2. For purposes of tracking the progress of the Pilot, the State agency will provide EPA Headquarters with quarterly updates on progress at the sites (status, schedules and deliverables) and summaries of events expected to occur in the next quarter.

G. Schedule

1. EPA Region II and the State of New Jersey agree to the following schedule:

Solid Waste Disposal Area (SWDA)

<u>MILESTONES</u>	<u>ACTION</u>	<u>DATE</u>
[For RI/FS] ARAR/TBC Determinations		
2nd Draft RI/FS Workplan	RP Submittal	05/04/92
Final RI/FS Workplan	Approval	06/30/92
Draft RI Report/ Draft Endangerment Assessment/Draft Base Line Risk Assessment	RP Submittal	12/30/92
Final RI Report/ Final Endangerment Assessment/Final Base Line Risk Assessment	Approval	03/15/93
Draft Final FS	RP Submittal	01/15/93
Final FS	Approval	03/15/93
Proposed Plan	Final	03/27/93
Public Comment	Initiation	03/27/93
Public Meeting		04/17/93
Draft ROD		05/27/93
Final ROD	Signed	06/27/93

[For RD/RA] Draft RD Workplan	RP Submittal	09/25/93
RD Workplan	Approval	11/15/93
Draft RD Report	Submittal	06/30/94
RD Report	Approval	08/30/94
RA	Initiation	09/30/94

Extended RA (O&M) Plan	Recieve
---------------------------	---------

Final RA Inspection Reports	Recieve
-----------------------------	---------

Final Construction Report	Approve
------------------------------	---------

Close-out & Deletion Package	Submit
---------------------------------	--------

Notice of Intent to Delete	Public Notice
-------------------------------	---------------

Planning & Management Reports	Recieve
----------------------------------	---------

Process Area

<u>Milestone</u>	<u>Action</u>	<u>Date</u>
Draft RI/FS Workplan	RP Submittal	06/10/92
RI/FS Workplan	Approval	10/01/92
Draft RI Report/ Draft Endangerment Assessment/Draft Base Line Risk Assessment	RP Submittal	04/03/94
Final RI Report/ Final Endangerment Assessment/Final Base	Approval	08/08/94

Line Risk Assessment

2. Generally, EPA assumes that the lead will not change for the site after completion of the Pilot unless the lead is redesignated for reasons specified in Section B.2.b. Therefore, the Region and State agree to develop another schedule for remedial activities remaining at the site not covered by the above agreement or order described in Section II.B.1.c.



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF REGULATORY SERVICES
CN 402
TRENTON, N.J. 08625
609-292-2906

SIGNED
HERCULES
ACO

GERARD BURKE
DIRECTOR

BARBARA M. GREEN
DEPUTY DIRECTOR
GEORGE F. SCHLOSSER
ASSISTANT DIRECTOR

JUL 3 1986

Roxanne E. Jayne, Esq.
Hercules Incorporated
Hercules Plaza
Wilmington, Delaware 19894

RE: Hercules Incorporated
Greenwich Township
Administrative Consent Order

Dear Ms. Jayne,

On June 30, 1986, I received the original Administrative Consent Order ("ACO") (with original attachments), as well as the Secretary's Certificate, which Hercules executed on June 30, 1986.

The Department has executed the original ACO and will retain it, and the original attachments, for its records. Enclosed is a true copy of the entire document, plus a copy of the Secretary's Certificate, for your files. The effective date is the date on which the Department signed the original document.

If you have any questions, please contact me at (609) 292-9342.

Sincerely,

Susan Savoca

Enclosures

c: Jerry Fitzgerald English, Esq. (with enclosures)
Douglas Cox (with enclosures)

nj

Jerry Burke	with ACC, but not	Attachments A to H	
George ...			
Susan ...	with ACC and with	Attachments A to H	
Jim Hamilton			
Nancy Jones			
Melinda Lower)
Marja VanOuverkerk)
Joseph Maher)



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES

CN 029

TRENTON, NEW JERSEY 08625

JOHN W. GASTON JR., P.E.
DIRECTOR

DIRK C. HOFMAN, P.E.
DEPUTY DIRECTOR

IN THE MATTER OF
HERCULES INCORPORATED

ADMINISTRATIVE
CONSENT
ORDER

The following FINDINGS are made and ORDER is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("NJDEP" or the "Department") by N.J.S.A. 13:1D-1 et seq. and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Assistant Director of Enforcement of the Division of Water Resources pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. Hercules Incorporated ("Hercules") operates a chemical manufacturing plant ("manufacturing plant") and tank farm area ("tank farm area") on a portion of a 350-acre site ("site") owned by Hercules and located in Gibbstown, Greenwich Township, New Jersey (Block 2008, Lot 6). On an otherwise unused portion of the site, located approximately 2,000 feet north of the manufacturing plant in a marsh between the plant and the Delaware River, is a former solid waste disposal area which had been used by the previous owner and, until 1974, by Hercules for disposal of solid wastes. The former solid waste disposal area consists of two (2) unlined lagoon areas into which a predecessor-in-interest allegedly disposed of aniline wastes and other unknown materials and a landfill area between the unlined lagoons used by Hercules for waste disposal until 1974.
2. In 1981, the United States Geological Survey ("USGS") released a report entitled "Water Quality Data for the Potomac-Raritan-Magothy Aquifer System, Trenton to Pennsville, New Jersey, 1980". This report documented volatile organic (benzene) ground water contamination in production well 4 ("PW 4") located over 2,000 feet south of the solid waste disposal area described in paragraph one (1), above. Based on the analysis received by NJDEP to date, the marsh area does not appear to be the source of the contamination in PW 4.

3. In August 1982, the Department completed a United States Environmental Protection Agency ("USEPA") Potential Hazardous Waste Site Inspection Report for the Hercules site. This report was applied to USEPA's hazard ranking system and the site scored high enough to be placed on the USEPA's National Priorities List ("NPL") developed pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 USC 9601 et seq.

4. By letter dated November 12, 1982, Hercules was directed by the Department to install four (4) shallow ground water monitoring wells (MW 1, MW 2, MW 3, MW 4) and to institute a ground water monitoring program for the four wells and the on-site production well, PW 4. Hercules complied with the directive and, in addition, performed an EP toxicity test on a black tar-like material found in the former solid waste disposal area. Hercules contracted with Environmental Resources Management, Incorporated ("ERM") as a consultant to assist in complying with the terms of the directive.

5. Based on the results of the EP toxicity analysis, it was determined that the black tar-like material did not exhibit the characteristic of EP toxicity under N.J.A.C. 7:26-8.12 and was therefore not a hazardous waste on that basis. Ground water analyses of the monitoring wells cited in paragraph four (4) confirmed on-site contamination. The contaminants found included phenol, lead, benzene, toluene and ethylbenzene. Ground water analyses of MW 1 described in paragraph 4, identified volatile organic contamination in the area of the manufacturing plant and the tank farm 2000 feet south of the solid waste disposal area. Contamination was also detected in well MW 4 located in the former solid waste disposal area. Analysis of samples obtained from MW 4 indicate the presence of volatile organics and lead. Four shallow monitor wells (MW 12, MW 13, MW 14 and MW 15) were subsequently installed in or about the solid waste disposal area. Detectable levels of total organic carbon and phenols were found by analysis of samples taken from MW 12, MW 13, MW 14 and MW 15. All five (5) monitoring wells installed in the former solid waste disposal area (MW 4, MW 12, MW 13, MW 14 and MW 15) have been screened in the shallow (upper) water bearing unit.

6. Subsequent to the work performed under the November 12, 1982 directive, Hercules, with the assistance of ERM, initiated additional studies of geology, hydrology and ground water contamination at, and adjacent to, the manufacturing plant to determine the presence of contamination, the extent of contaminant migration, and identification and implementation of a ground water cleanup program, if such was determined to be necessary. Hercules and ERM also initiated a treatability study to determine if the plant's presently existing wastewater treatment system could adequately treat all or a portion of recovered contaminated ground

water. Four phases of the hydrogeology studies have been completed and the information submitted to NJDEP.

7. To date, Hercules has operational thirty-two (32) on-site and twenty-three (23) off-site ground water monitoring wells and eight (8) recovery wells. Hydrogeological data obtained during the installation of these wells indicates that there are three (3) locally, hydraulically connected water bearing units under the on-site and off-site areas of concern. Data indicate that contamination exists in the shallow water bearing unit beneath the former solid waste disposal area. All three water bearing units have been shown to contain contaminants under portions of the manufacturing plant and the tank farm area of the site. Ground water data also confirms the existence of contamination off-site in the intermediate and deep water bearing units.

8. Hercules has been operating a ground water recovery system. Hercules is presently utilizing PW 4 as the main recovery well for this system. This well, screened from ninety (90) feet to one hundred twenty (120) feet, is being pumped at an average rate of eighty (80) gallons per minute ("gpm") and is used in the manufacturing process. Waste process water and the water from the recovery wells are sent to the on-site treatment plant for ultimate discharge to the Delaware River. Hercules presently discharges treated wastewater to the Delaware River under authorization of New Jersey Pollution Discharge Elimination System (NJPDES) Permit No. NJ0005134.

9. Based on the data generated by Hercules to date, it is believed that most of the off-site and on-site ground water contamination has been delineated.

10. Samples taken by both the Department and Hercules of the Greenwich Township Potable Supply Wells (No. 4, 5 and 6) in proximity to the Hercules' site have not shown signs of volatile organic, cumene, or phenol contamination. Hercules samples and analyzes Greenwich Township Potable Supply Well No. 4, on a quarterly basis. Greenwich Township Potable Supply Well No. 5 is located west of MW 24A, 24B and 24C. Analysis of monitoring wells 24B and 24C have indicated levels of organic contaminants. The western boundary of the ground water contaminant plume has not been delineated in the area between Greenwich Township Potable Supply Well No. 5 and MW 24A, MW 24B and MW 24C.

11. In 1983 and during the first quarter of 1985, Hercules performed an exploratory soil sampling program in the vicinity of the manufacturing plant and tank farm area. The soil samples were taken in the unsaturated zone soils above the shallow ground water table. The purpose of the soil sampling program was to investigate the possibility of large amounts of organic contaminants being held in low permeability soil layers and then slowly leaching into the shallow ground water table. Though

organic concentrations were found in the unsaturated soils at some sampling locations, it does not appear that a laterally extensive silty or clayey layer exists in the unsaturated zone.

12. In 1980, pursuant to N.J.A.C. 7:14A-4.1 et seq. and 7:26-12.1 et seq., Hercules submitted a Part A of a hazardous waste facility application for hazardous waste storage in containers, storage in a surface impoundment, and treatment in tanks. The surface impoundment stores hazardous waste generated during the investigation of this NPL site. Hercules has submitted a Part B hazardous waste facility application to NJDEP.

13. Based on the facts set forth in this FINDINGS section, the Department has determined that Hercules has violated the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically, N.J.S.A. 58:10A-6, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq.

14. By the execution of this Administrative Consent Order, Hercules expresses its desire to amicably resolve this matter but does not admit any violation of N.J.S.A. 58:10A-1 et seq.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED AND AGREED THAT:

I. Groundwater Monitoring and Recovery

15. Hercules shall continue to operate its ground water recovery well system in such a manner as to prevent further contamination from leaving the Hercules property boundary and to treat and remedy the on-site and off-site ground water contamination which has emanated or is emanating from the Hercules site, including but not limited to any contamination caused by Hercules' predecessors-in-interest. Said system shall operate until the contaminant concentration is as follows:

(a) For hazardous waste constituents identified in N.J.A.C. 7:26-8.16, the concentration limit shall not exceed the natural background level in the ground water, unless provided otherwise by paragraph 15(b), below:

(b) For any of the hazardous waste constituents identified in N.J.A.C. 7:26-8.16 and in Table 1 of N.J.A.C. 7:14A-6.15(e), the concentration limits shall not exceed the respective value given in that table if the natural background level of the constituent is below the value given in Table 1;

(c) For contaminants not identified in N.J.A.C. 7:26-8.16, the concentration limit shall not exceed the limit specified

in the State ground water quality standards, N.J.A.C. 7:9-6, or, where no State groundwater quality standard exists for a contaminant not identified in N.J.A.C. 7:26-8.16, natural background.

(d) Where the maximum concentrations specified in Table 1 of N.J.A.C. 7:14A-6.15(e) conflict with the State ground water quality standards in N.J.A.C. 7:9-6, the more stringent concentration limit shall apply.

(e) At Hercules' discretion, alternative concentration limits may be requested. Such a request must include an identification of any underground sources of drinking water, consideration of State ground water quality standards, and the factors set forth at N.J.A.C. 7:14A-6.15(d)2. To obtain the Department's approval of such an alternative, Hercules shall demonstrate to the Department's satisfaction that the alternative concentration will not pose a substantial present or potential hazard to human health or the environment as long as the alternative concentration is not exceeded.

16. Hercules shall operate at a minimum four (4) recovery wells and treat the recovered ground water at the on-site wastewater treatment system in compliance with its current or any future surface water and ground water discharge permits issued by the Department. Within thirty (30) calendar days of the effective date of this Administrative Consent Order, Hercules shall submit to the Department for its review and approval a submittal describing the recovery wells which are to be used and their pumping rates. Hercules shall submit all data available as of the date of submission. This submittal shall detail the basis by which the wells and rates are chosen, including but not limited to:

(a) Results of all pump tests, the associated individual and collective cone(s) of depression and any effects of pumping within one water bearing unit on ground water flow in the other hydraulically connected water bearing units;

(b) Natural groundwater flow rates and aquifer properties of each of the water bearing units; and

(c) Maximum obtainable well pumping capabilities of each of the recovery wells.

— 17. By December 31, 1986, Hercules shall conduct a simultaneous pump test of all recovery wells and shall submit to NJDEP by January 30, 1987 a report which includes, at a minimum, the following:

(a) Results of all pump tests and the associated drawdown curves, the associated individual and collective cone(s) of

depression and any effects of pumping within one water bearing unit on groundwater flow in the other hydraulically connected water bearing units;

(b) Natural groundwater flow rates and aquifer properties of each of the water bearing units; and

(c) Maximum obtainable well pumping capabilities of each of the recovery wells.

18. Unless already completed in 1986 before the effective date of this Administrative Consent Order, within sixty (60) calendar days of the effective date of this Administrative Consent Order, Hercules shall install a monitoring well in the intermediate zone hydraulically upgradient of the manufacturing plant and tank farm areas in a location approved by NJDEP. This well shall be designated and identified as MW 33B.

19. Hercules shall continue its ground water sampling and monitoring program ("Monitoring Program"). All monitoring wells shall be part of the Monitoring Program and the Monitoring Program shall be divided into three (3) parts.

(a) Part One of the Monitoring Program will pertain to those wells that have:

- i. Total volatile organic concentrations of 100 ppb or greater; or
- ii. Total phenol concentrations of 1 part per million (ppm) or greater; or
- iii. Cumene concentrations of 100 ppb or greater.

(b) Part Two of the Monitoring Program will pertain to those wells that contain concentrations less than the criteria outlined in paragraph 19(a) but equal to or greater than a total organic compound concentration of fifty (50) ppb.

(c) Part Three of the Monitoring Program will pertain to those wells containing less than a total of fifty (50) ppb total organic compound at the present time and during the previous four quarters.

(d) Total organic compound, for the purpose of this Administrative Consent Order, shall be defined as the arithmetic sum of a volatile organic scan plus cumene.

20. The initial well designation for the Monitoring Program is to be proposed by Hercules based on its review of the last three (3) sets of analytical data and identification of those wells which exceed the limits established in paragraphs 19a, 19b and 19c,

above, during at least two of the last three sets of data. Unless already completed in 1986 before the effective date of this Administrative Consent Order, by June 15, 1986, Hercules and its consultant shall review the data and recommend which wells shall be so designated and submit the recommendation and the justification thereof to the NJDEP for approval. Hercules shall modify the well designation to conform to NJDEP's comments.

21. Monitoring Program Part One shall be as follows:

(a) Monitoring Program Part One shall consist of taking representative samples of ground water from each applicable well on a quarterly basis with the quarters being January through March, April through June, July through September, and October through December. The first quarter for which Monitoring Program Part One applies is January through March / 1986. Upon NJDEP approval of well designation, Hercules shall sample all Monitoring Program Part One wells for volatile organics and then yearly thereafter (during the same quarter). All quarterly samples taken in Monitoring Program Part One shall be analyzed for the following:

Cumene	Ethylbenzene
Benzene	Total Phenols
Toluene	

(b) In addition, depth to water measurements shall be taken prior to purging and sampling and shall be submitted with the analysis. The elevation shall be established by a New Jersey licensed land surveyor and shall be in relation to the New Jersey geodetic control datum. The depth to water measurements shall include and be reported as:

- i. Elevation of top of well casing with cap removed (in feet MSL to nearest .01).
- ii. Elevation of original ground level (in feet MSL to nearest .01).
- iii. Depth to water table from top of casing prior to sampling with cap removed (in feet to nearest .01).
- iv. Depth to water table from original ground level prior to sampling (in feet to nearest .01).

(c) Upon Department approval, wells may be transferred to Monitoring Program Part Two as described in paragraph 22(a) below, only if the analyses thereof have indicated, over four consecutive quarters, a total organic compound concentration level less than 100 ppb, but greater than 50 ppb, and a total phenol level less than 1 ppm.

22. Monitoring Program Part Two shall be as follows:

(a) Monitoring Program Part Two shall consist of taking representative samples of ground water from each applicable well (including samples from those wells from Part One that may become subject to Part Two because of improved quality as provided in paragraph 21, above,) on a quarterly basis with the quarters beginning January through March, April through June, July through September, and October through December. The first quarter for which Monitoring Program Part Two applies is January through March 1986. All samples shall be analyzed for the following parameters:

Volatile Organic Scan

Cumene

Total Phenol

(b) In addition, depth to water measurements shall be taken prior to purging and sampling and shall be submitted with the analysis. The depth to water requirements of paragraph 21(b), above, shall also apply. After NJDEP receipt and review of one year's worth of ground water monitoring data under the Part Two Monitoring Program, Hercules may request Monitoring Program Part Three for those wells that contain concentrations less than the criteria outlined in paragraph 19(b).

23. Monitoring Program Part Three shall be as follows:

(a) Monitoring Program Part Three shall consist of taking representative samples of ground water from each applicable well, including samples from those wells from Part Two that may become subject to Part Three because of improved quality as provided in paragraph 22, above.

(b) The wells initially subject to Monitoring Program Part Three shall be sampled during January, February, or March 1986 and thereafter on a yearly basis. Wells which subsequently become subject to Monitoring Program Part Three shall be sampled on the same yearly basis. These wells shall be sampled for the following parameters:

Volatile Organic Scan

Cumene

Total Phenol

(c) In addition, Hercules shall sample these wells if either Hercules or NJDEP believes there is evidence that contaminant

migration patterns have been altered such that contaminant concentrations may be expected to increase above the 50 ppb concentrations for total organic compound. The depth to water requirements outlined in paragraph 21(b) shall also apply.

24. (a) In addition to the inclusion of the following wells into Monitoring Program Parts One, Two or Three, the following wells shall be sampled and analyzed for all USEPA priority pollutants (Attachment A) and the analysis submitted to NJDEP by September 30, 1986:

PW4 MW 16B MW 8 MW 21C
MW 6B MW 22B MW 10

(b) In addition to these parameters, Hercules shall also identify and quantify forty (40) organic non-priority pollutant compounds, as described in paragraph 42, if present, and submit the results to NJDEP by September 30, 1986.

(c) Note that for the organic non-priority pollutant compounds only, substances with responses greater than twenty-five (25) percent of the internal standard are required to be searched. Internal standard concentration is assumed to be 50 ppb.

(d) The laboratory data from the analyses required by this paragraph shall be submitted in accordance with the Tier I requirements in Attachment B.

(e) At the discretion and direction of NJDEP, any additional wells installed by Hercules either on-site or off-site shall also be sampled and analyzed by Hercules for priority pollutants plus forty (40) peaks as outlined in paragraph 42.

25. From June 1986 to May 1987, Hercules shall obtain monthly depth to water measurements as described in paragraph 21(b) for monitoring wells MW 4, MW 12, MW 13, MW 14, MW 15 and any additional wells in the former solid waste disposal area. Additionally, in March 1986, depth to water measurements in each well shall be taken either continuously with a continuous recorder or manually every thirty minutes for an entire tidal cycle during a day with the month's highest predicted tide. Depth to water measurements from these wells shall be tabulated and reported to NJDEP. The June 1986 measurements shall be submitted on July 30, 1986. The July, August and September 1986 measurements shall be submitted on October 30, 1986. The October, November and December measurements shall be submitted on January 30, 1987. The January, February and March 1987 measurements shall be submitted on April

30, 1987. The April and May 1987 measurements shall be submitted on July 30, 1987.

26. (a) By September 30, 1986, Hercules shall sample the following wells or any other additional wells deemed necessary by NJDEP to adequately monitor the former solid waste disposal area and the samples shall be analyzed for USEPA priority pollutants plus 40 as specified in paragraph 42:

MW 12
MW 13

MW 14
MW 15 -

(b) The laboratory data from the analyses required by this paragraph shall be submitted in accordance with the Tier I requirements in Attachment B.

(c) Hercules shall include said wells in Monitoring Program Part One, Part Two or Part Three as directed by NJDEP after NJDEP has received and reviewed the data required by this paragraph.

27. All water table elevations and laboratory data obtained in accordance with the ground water monitoring program as set forth above in paragraphs 19 to 23 and 26 shall be submitted to NJDEP no later than the 30th calendar day of the month following the end of each quarter for which said data was obtained. Included in each submittal shall be a piezometric contour map, with all water table elevations as recorded for the quarter clearly indicated at each well location on the map.

28. Hercules shall continue to provide analysis of the Greenwich Township Potable Supply Well No. 4 located on Memorial Avenue and the Greenwich Township Potable Supply Well No. 5 on a quarterly basis or at any other frequency NJDEP determines, for:

Volatile Organics

Cumene

Total Phenols

29. Hercules shall delineate the western boundary of the contaminant plume between well cluster 24 and Greenwich Township Potable Supply Well No. 5. At least one cluster of monitoring wells (one in the intermediate and one in the deep water-bearing units unless NJDEP determines otherwise) shall be installed west of monitoring wells 24A, 24B and 24C and east of Greenwich Township Potable Supply Well No. 5 within sixty (60) calendar days of the effective date of this Administrative Consent Order. In the event, that this initial well cluster does not delineate the western boundary of the contaminant plume, Hercules shall install

additional cluster wells in accordance with a timeframe established by NJDEP. These wells shall meet the design standards shown on the attached well specifications (Attachments C and D) and shall also meet the standards for a satisfactory groundwater monitoring well as defined in N.J.A.C. 7:14A-6.13. These wells shall initially be included in Monitoring Program Part One.

30.. Upon the Department's receipt and review of four (4) quarters of ground water monitoring data collected during implementation of the Monitoring Program set forth in paragraphs 19 to 23 above, Hercules may request the Department to consider revisions to the wells, parameters and frequencies of said monitoring programs. The Department reserves the right to increase the number of parameters or frequency of sampling within the monitoring program through this Administrative Consent Order or any subsequent permit to be consistent with current State and Federal hazardous waste regulations and N.J.A.C. 7:14A-1 et seq.

31. (a) Hercules shall submit to the Department on a quarterly basis with quarters being January through March, April through June, July through September and October through December, a ground water progress report. The reports shall be submitted to the Department by the 30th of the month following the quarter they are due and shall include the days and hours of ground water pumping, the daily volume of ground water pumped and any deviations from the pumping schedule of the previous quarter. The first progress report shall be submitted to NJDEP by June 30, 1986 for the first quarter of 1986. For a period of one year from the effective date of this Administrative Consent Order, the progress reports shall include an evaluation by a professional hydrogeologist of the effectiveness of the ground water recovery system and the hydrogeologist's appropriate proposals on ways to maximize the recovery system's efficiency; thereafter, this evaluation shall be included yearly unless NJDEP requests otherwise. Hercules shall present said proposals to the Department for review and approval, including an implementation timetable. Within thirty (30) calendar days of NJDEP's comments on the proposal, Hercules shall modify the proposals to conform to said comment and resubmit the proposals to NJDEP. Upon receipt of NJDEP's approval of the proposals, Hercules shall implement the approved proposals in accordance with the approved timetable.

(b) After reviewing at least three (3) progress reports as required by paragraph 31(a) and other available information, the Department may determine that the approved ground water recovery system is not sufficient to prevent contamination from leaving the property boundary or is not sufficient to remedy the contamination on and off site within a reasonable period of time; provided, however, that any Departmental assessment of performance based on laboratory data shall not

be made until the generation of nine (9) month's worth of such data.

(c) Additional remedial actions, including but not limited to the installation and operation of additional recovery wells, shall be undertaken by Hercules should NJDEP determine that the existing recovery well system is ineffective in containing the off-site migration of contamination or making satisfactory progress towards achieving the concentration limits established pursuant to paragraph fifteen (15). Prior to the installation and operation of any new recovery well, Hercules shall submit to NJDEP for review and approval all well plans, specifications, and timetable for implementation. If new recovery wells are installed, Hercules and its consultant shall determine the most effective pumping capacity of each well. Any ground water recovered from any new recovery wells shall also be discharged to the on-site wastewater treatment system for treatment in conformance with the terms and conditions of all applicable permits for the site, or be treated and disposed of in any other manner approved by the Department.

(d) In the event that the Department determines that the on-site wastewater treatment system violates NJPDES discharge limits set forth in any permit issued pursuant to N.J.A.C. 7:14A-1 et seq., Hercules shall, at the Department's discretion and direction, propose modifications to the system within thirty (30) calendar days of Department notification. Within thirty (30) calendar days after receipt of the Department's comments on the proposed modifications to the treatment system, Hercules shall modify the proposal to conform with said written comments and shall submit the modified proposal to the Department for its approval. After the Department's final approval of modifications, Hercules shall implement said modifications within the time frame approved by the Department.

32. Hercules shall provide the Department with at least ten (10) calendar days prior oral or written notification of intended dates and locations for all well drilling and sampling. Hercules shall allow the Department to observe said drilling and obtain duplicates of all of said ground water samples for independent analysis. Hercules shall obtain all necessary well drilling permits prior to the actual drilling date. Once the wells are installed, all well construction details and geological logs obtained during the installation shall be submitted to the Department as soon as they become available.

33. (a) Within sixty (60) calendar days of the effective date of this Administrative Consent Order, Hercules shall submit a quality assurance project management plan ("QAPMP") as

described in Attachment E. Hercules shall comply with the approved QAPMP.

(b) The following wells will be designated as Tier I monitoring wells.

MW 2	MW 23	MW 27C
MW 5	MW 23B	MW 28B
MW 5B	MW 23C	MW 28C
MW 6	MW 24	TW 2
MW 8C	MW 24B	MW 33B
MW 18B	MW 24C	
MW 21	MW 25C	
MW 21B	MW 26	
MW 21C	MW 26B	
MW 22	MW 26C	
MW 22B	MW 27B	
MW 22C		

Data generated by the initial round of sampling in 1986 and data generated by the initial round of sampling in 1987 for the above wells, regardless of which Monitoring Program these wells are categorized (Monitoring Program Parts One, Two, or Three), shall be reported to NJDEP in accordance with the Tier I Data Package as outlined in Attachment B. Sampling for all other monitoring wells, as required by each Monitoring Program Part, excluding those wells scheduled for initial priority pollutant analyses as outlined in paragraph 24 and 26, shall be reported in accordance with the Tier II Data Package as outlined in Attachment B or any other format that NJDEP deems acceptable and in accordance with the appropriate Monitoring Program parameters.

(c) Should NJDEP determine that the frequency of the Tier I reporting or the wells subject to Tier I reporting need to be modified, Hercules shall modify the frequency and the wells as directed by NJDEP.

(d) At the discretion and direction of NJDEP, Hercules shall report data from any well analyses conducted after the first round of sampling in accordance with Tier I upon written notice to Hercules by NJDEP.

(e) Sampling data from any new well installed after the effective date of this Administrative Consent Order shall initially be reported in accordance with the Tier I Data Package.

(f) All analyses required by this Administrative Consent Order shall also be in compliance with the scope of work section (section 7) of NJDEP's X-085 professional laboratory analytical services contract as set forth in Attachment F.

(g) Should, upon review by NJDEP, any analytical documentation fail to validate the required analyses, as specified in this Administrative Consent Order, and as outlined in Attachment B, said analytical data will be determined invalid. Hercules, upon receiving written notification by NJDEP that the data is invalid, shall reschedule the appropriate sampling, as determined by NJDEP, and notify NJDEP of the new sampling date. The resampling must occur within thirty (30) calendar days from the date of NJDEP notification and the results shall be submitted to NJDEP within five (5) calendar days of Hercules receipt of the results.

II. Investigation of the Solid Waste Disposal Area

34. (a) Hercules shall investigate the presence of contamination at the former solid waste disposal area. This shall entail conducting on-site and any necessary off-site investigations of soil, ground water, surface waters and sediment, air, and local potable wells (if applicable) as necessary to determine the types and physical state of contamination, to identify any migration of contamination, to delineate the extent of contamination, and to assess any adverse effects or risks associated with the presence of contamination at the solid waste disposal area.
- (b) Hercules shall conduct this investigation in a phased manner by initially conducting a soil sampling program in and around the former solid waste disposal area. Hercules shall submit to NJDEP for its review and approval within ninety (90) calendar days of the effective date of this Administrative Consent Order, a Field Investigation Work Plan which shall include a Field Sampling Plan, a time schedule, and provide for compliance with the NJDEP-approved Health and Safety Plan (HASP) (Attachment G), and QAPMP (Attachment E) as provided for in this Administrative Consent Order. The Field Sampling Plan shall specify for each field investigation the number, types, and locations of samples plus a justification for such; sampling methodologies to be employed; and the parameters to be analyzed. The Field Investigation Work Plan shall specify a representative number of soil samples to be accompanied by Tier I level data.
- (c) Upon NJDEP's approval of the Field Investigation Work Plan, Hercules shall conduct the soil sampling program provided for in the Work Plan in accordance with the approved schedule.
- (d) Within thirty (30) calendar days of completion of the initial soils investigation above, Hercules shall provide to NJDEP for its review and approval a Sampling Report which shall provide the following:

reimburse it for its costs in obtaining samples and analyzing the samples.

VI. Health and Safety Plan

38. Hercules shall submit to NJDEP for its review and approval, within sixty (60) calendar days of the effective date of this Administrative Consent Order, a comprehensive site-specific Health and Safety Plan (HASP). The requirements of the HASP are set forth in Attachment G.

VII. Hazardous Waste Facility Requirements

39. Hercules shall, in addition to the other ground water monitoring requirements required by this Administrative Consent Order or any discharge permit or renewal thereof, install and operate a ground water monitoring program pursuant to N.J.A.C. 7:14A-6.1 et seq. which shall include, at a minimum, one monitoring well installed hydraulically upgradient and at least three monitoring wells installed hydraulically downgradient of the surface impoundment. The number, location and depth of these surface impoundment monitoring wells shall be established so as to immediately detect any statistically significant increases in the pollutants analyzed for. Hercules shall sample and analyze in accordance with N.J.A.C. 7:14A-6.4 and any permit issued pursuant to N.J.A.C. 7:14A-1 et seq. and 7:26-12.1 et seq.

VIII. Force Majeure

40. If any event occurs which purportedly causes or may cause delays in the achievement of any provision of this Administrative Consent Order, Hercules shall notify the Department in writing within ten (10) calendar days of the delay or anticipated delay, as appropriate, describing the anticipated length, precise cause or causes, measures taken or to be taken, and the time required to minimize the delay. Failure by Hercules to comply with the notice requirements of this paragraph shall render this Force Majeure provision void and of no effect as to the particular incident involved.

41. If the delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or other circumstances alleged to be beyond the control of Hercules, then the time for performance hereunder shall be extended, subject to the approval of the Department, no longer than the delay resulting from such circumstances. However, if the events causing such delays are not found to be beyond the control of Hercules, failure to comply with the provisions of this Administrative Consent Order shall not be excused as herein provided and shall constitute a breach of the requirements of this Administrative Consent Order. The burden of proving that any delay is caused by circumstances beyond the control of Hercules and the length of such delay attributable to

those circumstances shall rest with Hercules. Increases in the costs or expenses incurred in fulfilling the requirements contained herein shall not be the basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements.

IX. General Provisions

42. All analyses required by this Administrative Consent Order shall be completed by a laboratory certified by the Department for the appropriate parameter in accordance with N.J.A.C. 7:18-1 et seq. Each laboratory utilized by Hercules shall certify, in writing, to Hercules and the Department that it is capable of supplying the appropriate Tier I and Tier II deliverables outlined in Attachment B. The methodologies for analyses required by this Administrative Consent Order shall be as follows:

- (a) The analysis for cumene shall be done in accordance with USEPA Method 624.
- (b) The analysis for total phenol shall be done in accordance with USEPA Method 420.
- (c) The analysis for the volatile organic fraction shall be done in accordance with USEPA Method 624 (GC/MS) or USEPA Methods 601 and 602 (GC.)
- (d) The analyses for the base neutral and acid extractable organic fraction shall be done in accordance with USEPA Method 625 (GC/MS).
- (e) The plus forty (40) organic non-priority pollutant compounds shall be identified and quantified as follows:
 - i. For each sample, Hercules shall perform a forward library search of the NBS mass spectral library to tentatively identify fifteen (15) non-priority pollutant compounds of the greatest apparent concentration in the purgeable organic fraction priority pollutant scan.
 - ii. For each sample, Hercules shall perform a forward library search of the NBS mass spectral library to tentatively identify ten (10) non-priority pollutant compounds of the greatest apparent concentration in the acid extractable organic fraction priority pollutant scan.
 - iii. For each sample, Hercules shall perform a forward library search of the NBS mass spectral library to tentatively identify fifteen (15) non-priority pollutant compounds of the greatest apparent

concentration in the base/neutral organic fraction priority pollutant scan.

43. Attachments A, B, C, D, E, F, G and H are incorporated herein by reference and made a part hereof.

44. Hercules shall comply with all applicable federal and state permits, regulations and statutes, including but not limited to compliance with the National Contingency Plan (40 CFR Part 300), while carrying out the obligations imposed by this Administrative Consent Order; compliance with this Administrative Consent Order shall not excuse Hercules from obtaining and complying with all applicable federal and state permits, statutes and regulations while carrying out the obligations imposed by this Administrative Consent Order. The execution of this Administrative Consent Order shall not preclude the Department from requiring that Hercules obtain and comply with any permit issued by the Department under the authority of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., or the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and/or any other statutory authority for the matters covered herein. The terms and conditions of any such permit shall not be pre-empted by the terms and conditions of this Administrative Consent Order even if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order. Should any of the measures to be taken by Hercules result in a new or modified discharge as defined in N.J.A.C. 7:14A-1 et seq., then Hercules shall apply for a permit modification from the Department prior to commencement of said activity or a new permit, if appropriate. Hercules reserves its statutory rights to contest any such permit; provided however that, notwithstanding its exercise of those rights, Hercules shall comply with this Administrative Consent Order.

45. The Department reserves the right to require Hercules to take additional actions should the Department determine that such actions are necessary to protect the public health, safety and welfare or the environment.

46. Hercules agrees to preserve during the pendency of this Administrative Consent Order and for a minimum of six (6) years after its termination, all records and documents in its possession or its divisions, employees, agents, accountants, contractors or attorneys which relate in any way to the site, despite any document retention policy to the contrary. After this six (6) year period, Hercules shall notify NJDEP within thirty (30) calendar days prior to the destruction of any such documents. Upon request by NJDEP, Hercules shall make available to NJDEP such records or copies of any documents. Additionally, if NJDEP requests that some or all documents be preserved for a longer period of time, Hercules shall comply with that request.

- i. A summary of soils investigation work completed.
 - ii. Recommendations to perform additional sampling including additional media based on an assessment of the initial soil sampling data and the sampling data from MW 12, MW 13, MW 14, and MW 15 and any additional wells in the former solid waste disposal area. The basis of the recommendations shall be to determine the contaminants to identify migration pathways, to delineate the extent of contamination, and to assess any adverse effects or risks associated with the presence of contamination. The recommendations shall be provided in the form of a Field Sampling Plan and shall include an implementation time schedule.
- (e) Upon NJDEP's approval of the above Sampling Report and Field Sampling Program, Hercules shall implement the approved Field Sampling Plan in accordance with the approved schedule.
- (f) Within sixty (60) calendar days of completion of the field investigations to satisfy the recommendations identified in paragraph 34(d)ii, Hercules shall submit to NJDEP for its review and approval a Final Field Investigation Report that summarizes the results of the field investigations including an assessment of the specific on-site and off-site health and environmental effects considering environmental fate and exposure pathways of the contaminants identified. The Final Field Report shall also include a detailed site map. The map scale to be used will be 1:200 with a 2-foot contour interval. The detailed site map shall include, at a minimum, the location of:
- i. Structures and impervious surfaces.
 - ii. Surface water sample location (with elevations and depths).
 - iii. Air quality sample locations.
 - iv. Soil test pit/bore hole locations (elevations and depths).
 - v. Disposal areas.
 - vi. Contaminated areas.
 - vii. Property boundaries.
 - viii. Adjacent property owners.
 - ix. Surrounding land use.

(g) Within ninety (90) calendar days of NJDEP's approval of the above Final Field Report, Hercules shall complete and submit to NJDEP for its review and approval a Feasibility Study which shall identify and evaluate all remedial action alternatives to remedy the contamination and shall recommend the most cost-effective and environmentally sound alternative that is technologically feasible and reliable and which effectively mitigates and minimizes damage to and provides adequate protection of the public health, safety, welfare, and the environment. Attachment H provides the requirements for each of the tasks of the Feasibility Study. The Feasibility Study shall consist of the following tasks:

- i. Selection of Remedial Response Objectives and Identification of Alternatives,
- ii Evaluation of Alternatives, and
- iii. Conceptual Design of System(s) to be Implemented and Final Report.

III. Soil Investigation and Feasibility Study

35. (a) In order to address the soil contamination in the tank farm, the process area and other potential areas on and off site, Hercules shall submit to NJDEP for its review and approval, within one hundred twenty (120) calendar days of the effective date of the Administrative Consent Order, a Sampling Report which shall provide the following:

- i. A summary of the Task 4 work completed by ERM as part of their Phase V Investigation for Hercules. This shall include, but not be limited to, identification of the sampling locations, types, and methodologies; field procedures utilized; and sampling results with quality assurance/quality control procedures utilized.
- ii. Recommendations to perform additional sampling including additional media, if warranted, and additional parameters based on an assessment of the initial data. The basis of the recommendations shall be to determine the types and physical states of contamination, to identify migration pathways, to delineate the extent of contamination, and to assess any adverse effects or risks associated with the presence of contamination in the soil. The recommendations shall be provided in a Field Investigation Work Plan which shall include a Field Sampling Plan, Health and Safety Plan, Quality Assurance Project Management Plan and a project schedule. The Field Sampling Plan shall specify for

each field investigation the number, types, and locations of samples plus a justification for such; sampling methodologies to be employed; and the parameters to be analyzed for.

(b) Upon NJDEP's approval of the above Report, Hercules shall implement the approved Field Sampling Plan in accordance with the approved schedule.

(c) Within sixty (60) calendar days of completion of the field investigations to satisfy the recommendations identified in paragraph 35(a), Hercules shall submit to NJDEP for its review and approval a Field Investigation Report that summarizes the results of the field investigations including an assessment of the specific on-site and off-site health and environmental effects considering environmental fate and exposure pathways of the contaminants identified. The Report shall also include a detailed Site Map.

(d) Upon NJDEP's approval of the above Report, Hercules shall complete and submit to NJDEP for its review and approval within sixty (60) calendar days a feasibility study in accordance with Attachment H which shall identify and evaluate all remedial action alternatives to remedy the soil contamination and all other identified contaminated media and shall recommend the most cost-effective and environmentally sound alternative which effectively mitigates and minimizes damage to and provides adequate protection of the public health, safety, welfare, and the environment.

IV. Financial Requirements - Financial Assurance

36. (a) Hercules shall obtain and provide to the Department, an irrevocable letter of credit in the amount of \$2,000,000.00 to secure performance of all its obligations under this Administrative Consent Order. Said letter of credit shall be issued by a bank or other financial institution whose letter-of-credit operations are regulated and examined by a Federal or State agency. In the event that such bank or other financial institution is subject to Title 17 of Revised Statutes of New Jersey, the letter of credit shall not be automatically renewable but shall be renewable upon reapplication and review only. The letter of credit shall be issued for a period not exceeding one year. The letter of credit shall be renewed, or replaced by a substitute form of financial assurance in a form and manner acceptable to the Department, at least sixty (60) calendar days prior to its expiration date. The letter of credit shall contain a provision that in the event that it is not renewed or so replaced at least sixty (60) calendar days before its expiration date, the financial institution shall advise the Department in writing at least forty-five (45) calendar days

prior to the expiration date that the letter of credit has not been renewed or so replaced. The letter of credit shall also contain a provision that in the event the letter of credit is not renewed or so replaced at least sixty (60) calendar days before its expiration date, the financial institution shall deposit the full amount of the letter of credit into the standby trust fund required by paragraph 36(b) below, no later than fifteen (15) calendar days before the expiration date of the letter of credit and shall notify the Department in writing within seven (7) calendar days that the amount was so deposited. Hercules shall maintain said letter of credit and the standby trust fund required by paragraph 36(b) below, continually until it performs all its obligations imposed by this Administrative Consent Order to the Department's satisfaction or until the Department notifies the issuing institution and the trustee in writing. In the event that the Department determines that Hercules has failed to perform any of its obligations under this Administrative Consent Order, the Department may draw on the letter of credit; provided, however, that before any draw can be made, the Department shall notify Hercules in writing of the obligation(s) which it has not performed, and Hercules shall have a reasonable time, not to exceed fifteen (15) calendar days, to perform such obligation(s).

(b) Hercules shall establish an irrevocable standby trust fund which shall be the depository for all funds paid pursuant to a draft by the Department against the letter of credit established pursuant to this paragraph. All amounts paid pursuant to a draft by the Department shall be deposited promptly and directly by the institution which issued the letter of credit into said standby trust fund.

(c) Within thirty (30) calendar days after the effective date of this Administrative Consent Order, Hercules shall submit the following to the Department, for its review and approval: a proposed irrevocable letter of credit which meets the requirements of paragraph 36(a) above, a proposed trust agreement to establish the irrevocable standby trust fund required by paragraph 36(b) above, and a proposed certification of acknowledgement. The wording of the irrevocable letter of credit, the wording of the trust agreement, and the wording of the certification of acknowledgement shall be identical to the wording specified in Appendix A of N.J.A.C. 7:26-9 with only those modifications which are required by this Administrative Consent Order and those modifications which are necessary to reflect that the purpose of the irrevocable letter of credit and the irrevocable standby trust fund is to secure Hercules' performance of its obligations under this Administrative Consent Order. The trust agreement shall include the name and address of the proposed trustee. The trustee shall be a

commercial bank, savings bank, or savings and loan association whose trust operations are regulated and examined by a federal or state agency. The trust agreement shall reference this Administrative Consent Order. The institution issuing the letter of credit shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(d) Within fifteen (15) calendar days after receipt of the Department's written comments on the proposed letter of credit, the proposed trust agreement, and the proposed certification of acknowledgement, Hercules shall modify the documents as necessary to conform to the Department's comments and resubmit them to the Department for its approval.

(e) Within fifteen (15) calendar days after receipt of the Department's written approval of the proposed letter of credit, the proposed trust agreement, and the proposed certification of acknowledgement, Hercules shall obtain and provide to the Department the irrevocable letter of credit in the amount of \$2,000,000.00, establish the standby trust fund and deposit an initial amount of \$1,000.00 into the standby trust fund, and submit an originally signed duplicate of the trust agreement to the Department accompanied by the certification of acknowledgement.

(f) Within sixty (60) calendar days of submission of the third progress report as required in paragraph 31 Hercules shall submit to the Department a report, subject to the Department's approval, detailing the cost of the ground water recovery program required in paragraph 15 and the programs required by paragraphs 34 and 35 and shall amend the letter of credit to an amount equal to the estimated cost of fully implementing these programs, including any operation and maintenance costs.

(g) At any time, Hercules may apply to the Department for approval to reduce the amount of the letter of credit to reflect the remaining costs of performing its obligations under this Administrative Consent Order or to substitute other financial assurances in a form and manner acceptable to the Department.

V. Financial Requirements - Sampling and Analytical Cost Reimbursement

37. Hercules shall establish, within thirty (30) calendar days of the effective date of this Administrative Consent Order, an escrow account in the amount of \$8,000.00 to be used solely by NJDEP to

47. In addition to the Department's and USEPA's statutory and regulatory rights to enter and inspect, Hercules shall allow the Department and its representatives and USEPA access to the site at all times for the purpose of monitoring Hercules' compliance with the terms of this Administrative Consent Order.
48. No informal advice, guidance, suggestions or comments by the Department or by persons acting on behalf of the Department shall be construed as relieving Hercules of its obligation to obtain written approvals as may be required herein, unless such advice, guidance, suggestions or comments shall be submitted in writing to Hercules by the Department.
49. No modification of this Administrative Consent Order shall be valid except by written amendment to this Administrative Consent Order duly executed by Hercules and the Department.
50. The provisions of this Administrative Consent Order shall be binding on Hercules, its successors, assigns, officers, employees, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
51. No obligations imposed by this Administrative Consent Order are intended to constitute a debt, damage claim, penalty or other civil action which should be limited or discharged in a bankruptcy proceeding. All obligations imposed by this Administrative Consent Order shall constitute continuing regulatory obligations imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare, and environment.
52. Hercules does hereby covenant and agree to fulfill faithfully all obligations imposed upon it under the provisions of this Administrative Consent Order and the statutes and regulations of the State of New Jersey applicable hereto. Hercules does hereby further covenant and agree to reimburse promptly and indemnify and save the Department harmless from all costs, damages and expenses (including reasonable attorneys fees) which may be expended or incurred by the Department in the fulfillment by the Department of obligations which are incumbent upon Hercules to be performed under this Administrative Consent Order, but which Hercules fails or neglects to fulfill faithfully pursuant to the terms thereof.
53. In the event that NJDEP and Hercules disagree concerning their rights and obligations or concerning the interpretation of this Administrative Consent Order, representatives of the parties hereto shall confer and attempt expeditiously and in good faith to resolve such disagreement.
54. All correspondence, reports and other writings required under the terms of this Administrative Consent Order to be submitted to

The Department shall be sent by certified mail, return receipt requested, to the following addressee in duplicate:

~~David S. Eervas, Chief~~
New Jersey Department of Environmental Protection
Bureau of Federal Case Management
CN-028
401 East State Street, Floor 5
Trenton, New Jersey 08625-0028

Also one (1) copy of each submission shall be made to:

Irene Kropp, Chief
New Jersey Department of Environmental Protection
Bureau of Ground Water Pollution Abatement
CN-029
401 East State Street, Floor 3
Trenton, New Jersey 08625-0029

Also three (3) copies of each submission shall be made to:

Kenneth Patrone
New Jersey Department of Environmental Protection
Bureau of Environmental Evaluation and Risk Assessment
CN-413
401 East State Street, Floor 6
Trenton, New Jersey 08625-0413

Also one (1) copy of each submission shall be made to:

Raymond Basso
USEPA - Region II *Specified*
N.J. Compliance Branch
26 Federal Plaza
New York, NY 10278

All correspondence, reports, comments communications and other writings under the terms of this Administrative Consent Order sent by the Department to Hercules shall be sent by certified mail, return receipt requested, to the following addresses:

Hercules Incorporated
Hercules Plaza
Wilmington, DE 19894
ATTENTION: Galina B. Chadwick
Manager, Environmental Affairs

Hercules Incorporated
Hercules Plaza
Wilmington, DE 19894
ATTENTION: David Mason
Regional Environmental Manager

Hercules Incorporated
Higgins Plant
P.O. Box Drawer K
Gibbstown, NJ 08027
ATTENTION: Robert J. Pasek
Environmental Coordinator

As of June 27, 1990

see letter to Chadwick (7/3/90)

the Department shall be sent by certified mail, return receipt requested, to the following addressee in duplicate:

James K. Hamilton, Chief
Southern Bureau of Regional Enforcement
Division of Water Resources
New Jersey Department of Environmental Protection
Twin Rivers Office Plaza
State Highway 33
Hightstown, New Jersey 08520

Fun Tantis

D. J. Z...

Also one (1) copy of each submission shall be made to:

En Site
~~Robert Berg~~, Chief
Bureau of Ground Water Quality Management
Division of Water Resources
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

U. J. Z...

Also three (3) copies of each submission shall be made to:

Bill Storm
~~Joseph Maher~~
Hazardous Site Mitigation Administration *BEERA*
Division of Waste Management
New Jersey Department of Environmental Protection
401 E. ~~428 E. State Street~~
Trenton, New Jersey 08608

K. J. Z...

Also one (1) copy of each submission shall be made to :

~~Perry Katz~~
Site Investigation and Compliance Branch
USEPA, Region II
26 Federal Plaza
New York, N.Y. 10278

All correspondence, reports, comments, communications and other writings under the terms of this Administrative Consent Order sent by the Department to Hercules shall be sent by certified mail, return receipt requested, to the following addresses:

Hercules Incorporated
Higgins Plant
P.O. Box 7
Gibbstown, New Jersey
ATTENTION: Plant Manager (*Robert...*)

54. All correspondence, reports and other writings required under the terms of this Administrative Consent Order to be submitted to the Department shall be sent by certified mail, return receipt requested, to the following addressee in duplicate (2):

Ms. Karen Jcutis, Chief
Bureau of Case Management
N.J.D.E.P.
Division of Hazardous Waste Management
401 East State Street
CN 028
Trenton, NJ 08625

Also one (1) copy of each submission shall be made to:

Mr. Kenneth Seit, Section Chief
Water Quality Management Element
Groundwater Quality Control Section
Division of Water Resources
N.J.D.E.P.
401 E. State Street
CN-028
Trenton, NJ 08625

Also three (3) copies of each submission shall be made to:

Mr. William Storm, Technical Coordinator
Hazardous Site Mitigation Administration
Division of Waste Management
N.J.D.E.P.
401 E. State Street
CN-028
Trenton, NJ 08625

Also one (1) copy of each submission shall be made to:

Perry Katz
Site Investigation and Compliance Branch
USEPA, Region II
26 Federal Plaza
New York, NY 10278

All correspondence, reports, comments, communications and other writings under the terms of this Administrative Consent Order sent by the Department to Hercules shall be sent by certified mail, return receipt requested, to the following addresses:

Hercules Incorporated
Higgins Plant
PO Drawer K
Gibbstown, New Jersey
ATTENTION: Plant Manager



Region

Melinda / Dave

*Hercules
Greenwich Twp
Gloucester County*

Interoffice Memo

Gibbstown, New Jersey
March 17, 1987

TO: Roxanne E. Jayne - Legal 8315 SE

FROM: R.J. Lange

Wm

GIBBSTOWN, N.J. PLANT ACO - JULY 2, 1986

Per reorganization of N.J.D.E.P. as noted in D.S. Zervas's letter of March 11, 1987, I have revised the communications distribution list in Section 54 of the July 2, 1986 ACO as attached.

RJ Lange

RJL:tlg
01/013

CC: Ms. Karen Jentis, NJDEP
Mr. Kenneth Seit, NJDEP
Mr. William Storm, NJDEP
Mr. Perry Katz, USEPA
D.J. Mason - 5145 NW, Wilm.
D.A. Cox - Gibbstown

Mar 18 10 45 AM '87
HAZARDOUS WASTE
MANAGEMENT
PROGRAMS

RECEIVED

with copy to:

Hercules Incorporated
Hercules Plaza
Wilmington, Delaware 19894
ATTENTION: Manager, Environmental Affairs (C. A. Brown)

55. Each undersigned representative of the parties to this document certifies that he or she is fully authorized to enter into its terms and conditions and to legally bind such party hereto.

56. The requirements of this Administrative Consent Order shall be deemed satisfied upon the receipt by Hercules of written notice from the Department that Hercules has demonstrated, to the Department's satisfaction, that all the terms of this Administrative Consent Order have been completed.

57. Hercules, without admitting to violation of any Federal, State or municipal laws or regulations but expressly denying any responsibility or liability of any kind with respect to its operation of the plant facility, and in the interests of amicable resolution and avoidance of litigation, hereby consents to and agrees to comply with all terms and provisions of this Administrative Consent Order which shall be fully enforceable in the New Jersey Superior Court having jurisdiction over the subject matter and signatory parties upon the filing of an action for compliance pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and may be enforced in the same manner as an Administrative Order issued pursuant to this same statutory authority. This Administrative Consent Order shall not prohibit, prevent or otherwise preclude the Department from taking whatever action it deems appropriate to enforce the environmental protection laws of the State of New Jersey. Nothing in this Administrative Consent Order shall constitute a waiver of any statutory right of the Department pertaining to any laws of the State of New Jersey, should the Department determine that additional actions are necessary to protect the public health, safety, welfare or the environment. The actions shall also include but not be limited to those actions that may be necessary or revealed by the programs required by paragraphs 34 and 35.

58. Hercules hereby consents to and agrees to comply with all the terms and provisions of this Administrative Consent Order and waives its right to any hearing on the entry of this Administrative Consent Order or the terms hereof; provided, however, that Hercules and NJDEP preserve all their rights with respect to the interpretation of this Administrative Consent Order and any claim that the terms of same have been violated.

59. The standard for any judicial review of the actions or determinations of the Department pursuant to this Administrative

Consent Order shall be whether such action or determination was arbitrary, capricious or unreasonable.

60. This Administrative Consent Order shall become effective upon the execution hereof by all parties.

DATE: July 2, 1986

DATE: June 30, 1986

BY THE AUTHORITY OF
GEORGE C. MCCANN, P.E.
ACTING DIRECTOR
DIVISION OF WATER RESOURCES
N.J. DEPARTMENT OF
ENVIRONMENTAL PROTECTION

BY: Peter T. Lypch
Peter T. Lypch, P.E.
Acting Assistant Director
Enforcement Element

HERCULES INCORPORATED

BY: A. F. Giacco

NAME: A. F. Giacco

TITLE: Chairman of the Board,
President and
Chief Executive Officer

205
825



Hercules Incorporated
Hercules Plaza
Wilmington, DE 19894
(302) 594-5000
Telex: 83-5479

SECRETARY'S CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES individually and on behalf of Hercules Incorporated, a Delaware Corporation (the "Company"), as follows:

- (1) That A. F. Giacco is the duly elected and acting Chairman of the Board, President and Chief Executive Officer of the Company, and that the facsimile signature set forth below is his genuine signature;

A. F. Giacco

- (2) That said A. F. Giacco is duly authorized, on behalf of the Company, to execute and deliver the Administrative Consent Order relating to correction of ground water contamination, completion of soil sampling study and other requirements to be undertaken at the Company's Gibbstown, New Jersey facility, the original of which Order is attached hereto; and that said Order is a binding and authorized commitment of the Company, enforceable in all respects in accordance with its terms.

WITNESS MY HAND and the corporate seal of the Company
this 30th day of June 1986.

Charles H. [Signature]
Secretary